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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Doc. No. AMS–SC–16–0021; SC16–906–1 IR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Relaxation of Container and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements a recommendation from the Texas Valley Citrus Committee (Committee) to relax the container and pack requirements currently prescribed under the Texas Citrus Marketing Order (order). The order regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The Committee locally administers the order and is comprised of producers and handlers operating within the production area. This rule adds the word "approximate" to the size specifications of three regulated containers to make the language consistent with other containers specified under the order. This change provides uniformity in the descriptions of containers and helps prevent potential compliance violations stemming from slight variations in container dimensions.

DATES: Effective June 16, 2016; comments received by August 15, 2016 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule relaxes container requirements currently prescribed under the order by adding the word "approximate" to the size specifications of three regulated containers to make the language consistent with other containers specified under the order. This change provides uniformity in the descriptions of containers and helps prevent potential compliance violations stemming from slight variations in container dimensions. The Committee unanimously recommended the change at a meeting on November 17, 2015.

Section 906.40(d) of the order authorizes the issuance of regulations to fix the size, weight, capacity, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of fruit. Section 906.340 specifies the container, pack, and container marking regulations under the order. This section specifies, in part, the containers and dimensions currently authorized under the order.

The Committee's Container Subcommittee (subcommittee) reviewed the list of containers authorized under the order and recommended that the Committee modify the descriptions of three of the containers. The subcommittee informed the Committee that the descriptions of three of the authorized containers specify exact dimensions whereas the remainder of the containers provide approximate dimensions. They stated that with the containers with specific dimensions container manufacturers could inadvertently generate containers that have a small variance in size from the specific requirements of the order causing a handler to be out of compliance with order requirements. The subcommittee noted that the remainder of the containers allow for such an occurrence by using the word "approximate" when providing the dimensions. Consequently, the Committee unanimously voted to add the word "approximate" in the description of the container sizes of the three containers with specific dimensions to make the language consistent with the descriptions of the other containers. The Committee believes this change will provide uniformity in the descriptions of all regulated containers and help prevent potential compliance violations stemming from slight variations in container dimensions.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 170 producers of oranges and grapefruit in the production area and 13 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistics Service, the average grower price for Texas citrus during the 2014–15 season was around $9.53 per box and total shipments were near 7.8 million boxes. Using the average grower price and shipment information, and assuming a normal distribution of production among all producers, the majority of producers would have annual receipts of less than $750,000. In addition, based on Committee information, the majority of handlers have annual receipts of less than $7,500,000 and could be considered small businesses under SBA's definition. Thus, the majority of Texas citrus producers and handlers may be classified as small entities.

This rule changes § 906.340 of the container, pack, and container marking requirements currently prescribed under the order. This rule adds the word "approximate" to the size specifications of three regulated containers to make the language consistent with other containers specified under the order. This change provides uniformity in the descriptions of containers and helps prevent potential compliance violations stemming from slight variations in container dimensions. Authority for this change is provided in § 906.40.

This action is not expected to impose any additional costs on the industry. However, it is anticipated that this action will have a beneficial impact. Adding the word "approximate" to the dimension requirements for the containers with specific dimensions could prevent possible order violations or potential extra costs associated with replacing incorrect cartons should container manufacturers inadvertently generate containers that do not meet order requirements. The benefits of this rule are expected to be equally available to all fresh orange and grapefruit growers and handlers, regardless of their size.

Regarding alternatives to this action, the Committee considered making no changes to the container dimensions, but determined that making the recommended change provides consistency in the descriptions of all regulated containers and would help prevent potential order violations. Therefore, the Committee rejected this alternative.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Texas citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Texas citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the November 17, 2015, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Container Subcommittee met on November 11, 2015, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the container and pack requirements currently prescribed under the Texas citrus marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action relaxes the current container and pack requirements; (2) the industry is currently shipping oranges and grapefruit; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

■ 1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 906.340, paragraphs (a)(1)(i) through (iii) are revised to read as follows:

§ 906.340 Container, pack, and container marking regulations.

(a) * * *

(1) * * *

(i) Closed fiberboard carton with approximate inside dimensions of 13¼ × 10½ × 7¼ inches: Provided, That the container has a Mullen or Cady test of at least 200 pounds;

(ii) Closed fully telescopic fiberboard carton with approximate inside dimensions of 16½ × 10¾ × 9½ inches:

(iii) Closed fiberboard carton with approximate inside dimensions of 20 × 13¼ inches and a depth from 9¾ to 13 inches: Provided, That the container has a Mullen or Cady test of at least 250 pounds: And Provided further, That the container may be used to pack any poly or mesh bags authorized in this section;

* * * * *

Dated: June 10, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–14151 Filed 6–14–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Doc. No. AMS–SC–15–0083; SC16–915–2 FR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Avocado Administrative Committee (Committee) for an increase of the assessment rate established for the 2016–17 and subsequent fiscal periods from $0.30 to $0.35 per 55-pound bushel container of Florida avocados handled under the marketing order (order). The Committee locally administers the order and is comprised of growers and handlers of avocados operating within the area of production. Assessments upon Florida avocado handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period began on April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective June 16, 2016.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202)720–8938, or Email: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Florida avocados beginning on April 1, 2016, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2016–17 and subsequent fiscal periods from $0.30 to $0.35 per 55-pound bushel container of avocados.

The Florida avocado marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs for goods and services in their local area, and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2013–14 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 9, 2015, and recommended 2016–17 expenditures of $302,553 and an assessment rate of $0.35 per 55-pound bushel container of avocados. In comparison, last year's budgeted expenditures were $602,553. The assessment rate of $0.35 is $0.05 higher than the rate currently in effect. During the 2015–16 season, the Committee used its authorized reserves to fund several large research projects to address the Laurel Wilt fungus, which can infect and kill avocado trees. This substantially reduced the funds in the Committee's reserves to $214,733. Further, at the current assessment rate, assessment income would equal only $300,000, an amount insufficient to cover the Committee's anticipated expenditures of $302,553. By increasing the assessment rate by $0.05, assessment income will be approximately $350,000. This amount should provide sufficient funds to meet 2016–2017 anticipated expenses and add money back into the Committee's authorized reserves.

The major expenditures recommended by the Committee for the 2016–17 year include $119,483 for salaries, $51,500 for employee benefits, and $25,500 for insurance and bonds. Budgeted expenses for these items in 2015–16 were $119,483, $51,500, and $25,500, respectively.

The assessment rate recommended by the Committee was derived by reviewing anticipated expenses, expected shipments of Florida avocados, and the level of funds in reserve. As mentioned earlier, avocado shipments for the year are estimated at one million 55-pound bushel containers which should provide $350,000 in assessment income. Income derived from handler assessments, along with interest income, should be adequate to cover budgeted expenses. Funds in the reserve (currently $214,733) will be kept within the maximum permitted by the order (approximately three fiscal periods' expenses as authorized in § 915.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2016–17 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 400 producers of Florida avocados in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to the National Agricultural Statistical Service (NASS), the average grower price paid for Florida avocados during the 2014–15 season was approximately $18.00 per 55-pound bushel container and total shipments were slightly higher than 1.2 million 55-pound bushels. Based on this information, the majority of avocado producers would have annual receipts less than $750,000. In addition, based on Committee information, the majority of Florida avocado handlers could be considered small business under SBA's definition. Thus, the majority of Florida avocado producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2016–17 and subsequent fiscal periods from $0.30 to $0.35 per 55-pound bushel container of avocados. The Committee recommended 2016–17 expenditures of $302,553 and an assessment rate of $0.35 per 55-pound bushel container. The assessment rate of $0.35 is $0.05 higher than the previous rate. The quantity of assessable avocados for the 2016–17 season is estimated at one million 55-pound bushel containers. Thus, the $0.35 rate should provide $350,000 in assessment income and be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2016–17 fiscal period include $119,483 for salaries, $51,500 for employee benefits, and $25,500 for insurance and bonds. Budgeted expenses for these items in 2015–16 were $119,483, $51,500, and $25,500, respectively.

During the 2015–16 season, the Committee used its authorized reserves to fund several large research projects to address the Laurel Wilt fungus. This substantially reduced the funds in the Committee's reserves. Further, at the current assessment rate and with the 2016–17 crop estimated to be one million 55-pound bushel containers, assessment income would equal only $300,000, an amount insufficient to cover the Committee's anticipated expenditures of $302,553. By increasing the assessment rate by $0.05, assessment income will be approximately $350,000. This amount should provide sufficient funds to meet 2016–17 anticipated expenses and add money back into the Committee's authorized reserves. Consequently, the Committee recommended increasing the assessment rate.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, such as the Committee's Budget and Personnel Committee. Alternative expenditure levels were discussed by this group, based upon the relative value of various activities to the South Florida avocado industry. The Committee ultimately determined that 2016–17 expenditures of $302,553 were appropriate, and the recommended assessment rate, along with interest income, would generate sufficient revenue to meet its expenses.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2016–17 season should be around $18 per 55-pound bushel container of avocados. Therefore, the estimated assessment revenue for the 2016–17 fiscal period as a percentage of total grower revenue would be approximately two percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Additionally, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 9, 2015, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189 (Generic Fruit Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on March 16, 2016 (81 FR 14019). Copies of the proposed rule were also mailed or sent via facsimile to all Florida avocado handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending April 15, 2016, was provided for interested persons to respond to the proposal. One comment was received in support of the proposal. Accordingly, no changes will be made to the rule as proposed, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving 2016–17 crop avocados from growers, and the fiscal period began on April 1, 2016, and the assessment rate applies to all Florida avocados received during the 2016–17 and subsequent seasons. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

■ 1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2016, an assessment rate of $0.35 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: June 10, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–14149 Filed 6–14–16; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–15–0074; FV16–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2016–2017 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2016–2017 marketing year, which begins on June 1, 2016. The Far West production area includes the states of Washington, Idaho, and Oregon, and designated parts of Nevada and Utah. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 958,711 pounds and 45 percent, respectively, and for Class 3 (Native) spearmint oil of 1,209,546 pounds and 50 percent, respectively. The Committee locally administers the marketing order for spearmint oil produced in the Far West and recommended these salable quantities and allotment percentages to help maintain stability in the spearmint oil market.

DATES: June 16, 2016.

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *DaleJ.Novotny@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 12866, 13563, and 13175.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect. Under the order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule will establish the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2016–2017 marketing year, which begins on June 1, 2016.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Committee meets annually in the fall to adopt a marketing policy for the ensuing marketing year or years. In determining such marketing policy, the Committee considers a number of factors, including, but not limited to, the current and projected supply, estimated future demand, production costs, and producer prices for all classes of spearmint oil. Input from spearmint oil handlers and producers regarding prospective marketing conditions for the upcoming year is considered as well.

If the Committee's marketing policy considerations indicate a need for limiting the quantity of any or all classes of spearmint oil marketed, the Committee subsequently recommends to USDA the establishment of a salable quantity and allotment percentage for such class or classes of oil in the forthcoming marketing year. Recommendations for volume control are intended to ensure that market requirements for Far West spearmint oil are satisfied and orderly marketing conditions are maintained.

The salable quantity represents the total amount of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the marketing year. The allotment percentage is the percentage used to calculate each producer's prorated share of the salable quantity. It is derived by dividing the salable quantity for each class of spearmint oil by the total of all producers' allotment bases for the same class of oil. Each producer's annual allotment of salable spearmint oil is calculated by multiplying their respective total allotment base by the allotment percentage for each class of spearmint oil. A producer's allotment base is their quantified share of the spearmint oil market based on a statistical representation of past spearmint oil production, with accommodation for reasonable, normal adjustments to such base as prescribed by the Committee and approved by USDA.

Salable quantities and allotment percentages are established at levels intended to fulfill market requirements and to maintain orderly marketing conditions. Committee recommendations for volume control are made well in advance of the period in which the regulations are to be effective, thereby allowing producers the chance to adjust their production decisions accordingly.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the full eight-member Committee met on October 21, 2015, and recommended salable quantities and allotment percentages for both classes of oil for the 2016–2017 marketing year. By a vote of 6–1, the Committee recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 958,711 pounds and 45 percent, respectively. With a unanimous vote, the Committee recommended the establishment of a salable quantity and allotment percentage for Native spearmint oil of 1,209,546 pounds and 50 percent, respectively. One Committee member did not vote in either motion.

This final rule establishes the amount of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2016–2017 marketing year, which begins on June 1, 2016. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

Class 1 (Scotch) Spearmint Oil

As noted above, the Committee recommended a salable quantity of Scotch spearmint oil of 958,711 pounds and an allotment percentage of 45 percent for the upcoming 2016–2017 marketing year. Motions for allotments of 41, 43, 46, 47, and 48 percent were made by members during the meeting but were ultimately not carried due to insufficient votes or a lack of seconding by other Committee members. To arrive at these recommendations, the Committee utilized 2016–2017 sales estimates for Scotch spearmint oil, as provided by several of the industry's handlers, historical and current Scotch spearmint oil production, inventory statistics, and international market data obtained from consultants for the spearmint oil industry.

Trade demand for Far West Scotch spearmint oil is expected to decrease from the 1,000,000 pounds anticipated in the 2015–2016 marketing year to 900,000 pounds in 2016–2017. Industry reports indicate that the decreased trade demand estimate is the result of decreased consumer demand for spearmint flavored products, especially chewing gum in China and India, as fruit flavors are gaining consumer preference. Strong, recovering production of spearmint oil in competing markets, most notably Canada, has also factored into the Committee's assessment of the market.

Production of Far West Scotch spearmint oil increased from 1,093,740 pounds in 2014 to an estimated 1,229,258 pounds for 2015. This increase in production, along with a simultaneous decrease in the demand estimate for the forthcoming 2016–2017 marketing year, is consistent with the Committee's desire to bolster the Scotch spearmint oil salable reserve inventory to ensure that the market is fully supplied. With the reserve pool of Scotch spearmint oil nearly exhausted, salable carry-in would be the only cushion to any unanticipated supply shocks that may affect the industry.

The Committee estimates that there will be 233,752 pounds of salable carry-in of Scotch spearmint oil on June 1, 2016. This figure, which is the primary measure of excess supply, would be up dramatically from the 4,494 pounds carried-in the previous year on June 1, 2015. The Committee further estimates that salable carry-in will grow to 292,463 pounds at the beginning of the 2017–2018 marketing year, if current market conditions and projections are maintained. This anticipated level of carry-in would be above the quantity that the Committee considers favorable (generally 150,000 pounds). However, without any Scotch spearmint oil in the reserve pool, the Committee believes that this higher salable carry-in is manageable.

The 2016–2017 Scotch spearmint oil salable quantity of 958,711 pounds recommended by the Committee represents a decrease of 306,914 pounds from the salable quantity established the previous marketing year (1,265,625 pounds). Of the total salable quantity established for the 2015–2016 marketing year, the Committee believes that 36,367 pounds of annual allotment will go unfilled as a result of producers who did not produce their entire annual allotment and who do not have any Scotch spearmint oil in the reserve pool to fill the deficiency. Therefore, the

Committee estimates the total available supply for the 2015–2016 marketing year to be just 1,233,752 pounds (4,494 pounds of carry-in plus 1,265,625 pounds of salable quantity less the 36,367 pounds of anticipated unused annual allotment).

The Committee estimates the 2016–2017 marketing year trade demand for Scotch spearmint oil at 1,000,000 pounds. When considered in conjunction with the 2015–2016 marketing year total available supply, the Committee expects that there will be 233,752 pounds of available carry-in of Scotch spearmint oil on June 1, 2016. That carry-in, when combined with the recommended 2016–2017 marketing year salable quantity of 958,711 pounds, will result in a total supply of 1,192,463 pounds of Scotch spearmint oil for the 2016–2017 marketing year. This quantity is expected to fully satisfy estimated market demand of 900,000 pounds.

The Committee's stated intent in the use of marketing order volume control regulations for Scotch spearmint oil is to keep adequate supplies available to meet market needs and maintain orderly marketing conditions. The recommended salable quantity of Scotch spearmint oil for the upcoming marketing year is less than the 1,265,853 pound salable quantity established for the previous year. Even so, the Committee expects that the market will be fully supplied for the 2016–2017 marketing year. In addition, the Committee expects that Scotch spearmint oil inventories will be replenished after being completely exhausted during the 2013–2014 marketing year.

The Committee believes that the recommended salable quantity will adequately meet demand, as well as result in a larger carry-in for the following year. The Committee developed its recommendation for Scotch spearmint oil salable quantity and allotment percentage for the 2016–2017 marketing year based on the information discussed above, as well as the computational data outlined below.

(A) *Estimated carry-in of Scotch spearmint oil on June 1, 2016: 233,752 pounds.* This figure is the difference between the revised 2015–2016 marketing year total available supply of 1,233,752 pounds and the estimated 2015–2016 marketing year trade demand of 1,000,000 pounds.

(B) *Estimated trade demand of Scotch spearmint oil for the 2016–2017 marketing year: 900,000 pounds.* This estimate was established by the Committee and is based on input from producers at six Scotch spearmint oil production area meetings held in mid-October 2015, as well as estimates provided by handlers and other meeting participants at the main meeting held October 21, 2015. The average estimated trade demand derived from the six production area producer meetings was 1,027,666 pounds, which is 6,084 pounds less than the average of trade demand estimates submitted by handlers. Far West Scotch spearmint oil sales have averaged 1,023,729 pounds per year over the last three years, and 954,578 pounds over the last five years. Given the anticipated market conditions for the coming year, the Committee decided it was prudent to anticipate the lower trade demand at 900,000 pounds. Should the initially established volume control levels prove insufficient to adequately supply the market, the Committee has the authority to recommend intra-seasonal increases, as were undertaken in the 2014–2015 marketing year, and several other previous marketing years.

(C) *Salable quantity of Scotch spearmint oil required from the 2016–2017 marketing year production: 666,248 pounds.* This figure is the difference between the estimated 2016–2017 marketing year trade demand (900,000 pounds) and the estimated carry-in on June 1, 2016 (233,752 pounds). This salable quantity represents the minimum amount of Scotch spearmint oil that may be needed to satisfy estimated demand for the coming year.

(D) *Total estimated allotment base of Scotch spearmint oil for the 2016–2017 marketing year: 2,130,469 pounds.* This figure represents a one-percent increase over the revised 2015–2016 total allotment base of 2,109,375 pounds as prescribed by the order under § 985.53(d)(1). The one-percent increase equals 21,094 pounds of Scotch spearmint oil. This total estimated allotment base is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The adjustment is usually minimal.

(E) *Computed Scotch spearmint oil allotment percentage for the 2016–2017 marketing year: 31.3 percent.* This percentage is computed by dividing the minimum required salable quantity (666,248 pounds) by the total estimated allotment base (2,130,469 pounds).

(F) *Recommended Scotch spearmint oil allotment percentage for the 2016–2017 marketing year: 45 percent.* This is the Committee's recommendation and is based on the computed allotment percentage (31.3 percent), and input from producers and handlers at the October 21, 2015 meeting. The recommended 45 percent allotment percentage reflects the Committee's belief that the computed percentage (31.3 percent) may not adequately supply the potential 2016–2017 Scotch spearmint oil market demand.

(G) *Recommended Scotch spearmint oil salable quantity for the 2016–2017 marketing year: 958,711 pounds.* This figure is the product of the recommended salable allotment percentage (45 percent) and the total estimated allotment base (2,130,469 pounds) for the 2016–2017 marketing year.

(H) *Estimated total available supply of Scotch spearmint oil for the 2016–2017 marketing year: 1,192,463 pounds.* This figure is the sum of the 2016–2017 recommended salable quantity (958,711 pounds) and the estimated carry-in on June 1, 2016 (233,752 pounds).

Class 3 (Native) Spearmint Oil

The Committee also recommended a 2016–2017 Native spearmint oil salable quantity of 1,209,546 pounds and an allotment percentage of 50 percent at the October 21, 2015, meeting. These figures represent a decrease of 131,723 pounds and 5 percent, respectively, from the previous marketing year. To formulate this recommendation, the Committee utilized Native spearmint oil sales estimates for the 2016–2017 marketing year, as provided by several of the industry's handlers, as well as historical and current Native spearmint oil market statistics.

The Committee estimates that there will be 609,603 pounds of Native spearmint oil in the reserve pool on June 1, 2016. This figure, which is the excess Native spearmint oil production held in reserve by producers, is up from the previous industry peak of 606,942 pounds on June 1, 2011. The 2016–2017 estimate is 163,765 pounds higher than the previous year's reserve pool level. Reserve pool levels of Native spearmint oil had been slowly moving toward the level that the Committee believes is optimal for the industry prior to the spike that is expected for the 2015–2016 marketing year. The increase in Native spearmint oil held in reserve is the direct result of greatly increased production and only moderately increased industry trade demand.

Far West Native spearmint oil production was 1,274,926 pounds in 2014, but jumped to 1,510,936 pounds in 2015, an 18.5 percent increase in just one year. In contrast, sales of Native spearmint oil have only been growing at around a 3 percent rate over the past five years. The Committee hopes that Native spearmint oil reserve pool inventory will reverse its current trend over the course of the 2016–2017 marketing year and begin to decrease to levels that are deemed optimal for the industry as producers curtail excess production and utilize their reserve pool stock to fill some of their annual allotments.

As mentioned previously, Committee statistics indicate that demand for Far West Native spearmint oil has been slightly increasing in recent years, peaking at 1,390,984 pounds for the full 2014–2015 marketing year; the most recent full marketing year recorded. In addition, recorded sales for June through October of 2015 are running ahead of the same period last year. This trend is expected to continue even as imports of spearmint oil are also rising. Canada has more than doubled shipments of spearmint oil into the U.S. market from 2014 to 2015, and Chinese shipments are up 14 percent over the same period.

The one exception in imports, India, has reduced shipments during the last year. Recent reports used by the Committee indicate that spearmint oil produced in India is improving in quality, yet decreasing in acreage. Indian spearmint oil is increasingly regarded as an alternative to high quality, Far West Native spearmint oil, but production problems have limited importation into the U.S. market. As a result, imports from India, while still in demand, decreased in the past year. However, spearmint oil from India may return as a major threat to the Far West Native spearmint oil industry's domestic market share in the future.

During a recent tour of U.S. end-user companies, the chairperson and Committee staff received input that indicated sales of mint products both domestically and abroad have slowed down. This is largely the result of slowing economies in Europe and Asia. End-users also felt the inventories of Native spearmint oil that they currently have on hand are adequate for the time being. The end-users did indicate that they intend to continue to rely on Far West production as their main source of high quality Native spearmint oil, but such demand may be at lower quantities moving forward in response to current market factors.

As such, spearmint oil handlers, who regularly help predict trade demand for Far West Native spearmint oil, estimate demand to range between 1,000,000 and 1,400,000 pounds (with a weighted average of 1,350,000 pounds) for the upcoming 2016–2017 marketing year. The Committee used the handlers' input when it established the estimated 2016–2017 marketing year Native spearmint oil trade demand of 1,275,000 pounds.

The estimated carry-in of 142,657 pounds of Native spearmint oil on June 1, 2016, in conjunction with the Committee-recommended salable quantity of 1,209,546 pounds, will result in an estimated total available supply of 1,352,203 pounds of Native spearmint oil during the 2016–2017 marketing year. The Committee expects that 77,203 pounds of salable Native spearmint oil will be carried into the 2017–2018 marketing year, a reduction of 65,454 pounds.

Carry-in spearmint oil is distinct from reserve pool spearmint oil and represents the amount of salable spearmint oil produced, but not marketed, in a previous year or years, but is available for sale in the current year under a previous year's annual allotment. It is the primary measure of excess spearmint oil supply under the order as it represents overproduction in prior years that is currently available to the market without restriction. Reserve pool oil, on the other hand, represents the amount of excess spearmint oil production held off the market under marketing order provisions and can only be marketed under certain conditions.

The Committee's stated intent in the use of marketing order volume control regulations for Native spearmint oil is to keep adequate supplies available to meet market needs while maintaining orderly marketing conditions. With that in mind, the Committee developed its recommendation for Native spearmint oil salable quantity and allotment percentage for the 2016–2017 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in of Native spearmint oil on June 1, 2016: 142,657 pounds.* This figure is the difference between the revised 2015–2016 marketing year total available supply of 1,465,990 pounds and the estimated 2015–2016 marketing year trade demand of 1,323,333 pounds.

(B) *Estimated trade demand of Native spearmint oil for the 2016–2017 marketing year: 1,275,000 pounds.* This estimate was established by the Committee and is based on input from producers at six Native spearmint oil production area meetings held in mid-October 2015, as well as estimates provided by handlers and other meeting participants at the October 21, 2015, meeting. This figure represents a decrease of 31,500 pounds from the previous year's estimate. The average estimated trade demand for Native spearmint oil from the six production area meetings was 1,323,333 pounds, whereas the handlers' estimates ranged from 1,000,000 to 1,400,000 pounds. The average of Far West Native spearmint oil sales over the last three years is 1,340,045 pounds. The Committee chose to be conservative in the establishment of its trade demand estimate to avoid oversupplying the market in the face of increasing production.

(C) *Salable quantity of Native spearmint oil needed from the 2016–2017 marketing year production: 1,132,343 pounds.* This figure is the difference between the estimated 2016–2017 marketing year estimated trade demand (1,275,000 pounds) and the estimated carry-in on June 1, 2016 (142,657 pounds). This is the minimum amount of Native spearmint oil that the Committee believes will be required to meet the anticipated 2016–2017 marketing year trade demand.

(D) *Total estimated allotment base of Native spearmint oil for the 2016–2017 marketing year: 2,419,091 pounds.* This figure represents a one-percent increase over the revised 2015–2016 total allotment base of 2,395,140 pounds as prescribed by the order in § 985.53(d)(1). The one-percent increase equals 23,951 pounds of Native spearmint oil. This estimate is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed Native spearmint oil allotment percentage for the 2016–2017 marketing year: 46.8 percent.* This percentage is calculated by dividing the required salable quantity (1,132,343 pounds) by the total estimated allotment base (2,419,091 pounds) for the 2016–2017 marketing year.

(F) *Recommended Native spearmint oil allotment percentage for the 2016–2017 marketing year: 50 percent.* This is the Committee's recommendation based on the computed allotment percentage (46.8 percent), the average of the computed allotment percentage figures from the six production area meetings (47.3 percent), and input from producers and handlers at the October 21, 2015, main meeting. The recommended 50 percent allotment percentage is also based on the Committee's belief that the computed percentage (46.8 percent) may not adequately supply the potential market for Native spearmint oil in the 2016–2017 marketing year.

(G) *Recommended Native spearmint oil 2016–2017 marketing year salable quantity: 1,209,546 pounds.* This figure is the product of the recommended allotment percentage (50 percent) and the total estimated allotment base (2,419,091 pounds).

(H) *Estimated available supply of Native spearmint oil for the 2016–2017 marketing year: 1,352,203 pounds.* This figure is the sum of the 2016–2017 recommended salable quantity (1,209,546 pounds) and the estimated carry-in on June 1, 2016 (142,657 pounds).

The salable quantity is the total quantity of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 958,711 pounds and 45 percent, and 1,209,546 pounds and 50 percent, respectively, are based on the goal of maintaining market stability. The Committee anticipates that this goal will be achieved by matching the available supply of each class of spearmint oil to the estimated demand of each, thus avoiding extreme fluctuations in inventories and prices.

The salable quantities presented in this rule are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity. The order contains a provision in § 985.51 for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions.

Under volume regulation, producers who produce more than their annual allotments during the marketing year may transfer such excess spearmint oil to producers who have produced less than their annual allotment. In addition, on December 1 of each year, producers that have not transferred their excess spearmint oil to other producers must place their excess spearmint oil production into the reserve pool to be released in the future in accordance with market needs and under the Committee's direction.

This regulation is similar to regulations issued in prior seasons. The average initial allotment percentage for the five most recent marketing years for Scotch spearmint oil is 50.4 percent, while the average initial allotment percentage in the same five-year period for Native spearmint oil is 51.4 percent.

Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a more stable market and increased returns. In conjunction with the issuance of this final rule, USDA has reviewed the Committee's marketing policy statement for the 2016–2017 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, fully meets the intent of §§ 985.50 and 985.51 of the order.

During its discussion of potential 2016–2017 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (*http://www.ams.usda.gov/publications/content/1982-guidelines-fruit-vegetable-marketing-orders*) has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, the Committee considered historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2016–2017 season in order to meet anticipated market demand.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight spearmint oil handlers subject to regulation under the order, approximately 38 producers of Scotch spearmint oil, and approximately 92 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 12 of the 38 Scotch spearmint oil producers, and 28 of the 92 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for purposes of weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, a majority of spearmint oil producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and, as such, are more at risk from market fluctuations. Such small producers generally need to market their entire annual production of spearmint oil and are not financially able to hold spearmint oil for sale in future years. In addition, small producers generally do not have a large assortment of other crops to cushion seasons with poor spearmint oil returns.

Conversely, large, diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support their operation for a period of time. Reasonable assurance of a stable price and market provides all producing entities with the ability to maintain proper cash flow and to meet annual expenses. The benefits for this rule are expected to be equally available to all producers and handlers regardless of their size.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2016–2017 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by matching supply to estimated demand, thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities that may be purchased or handled during the marketing year through volume regulations allows producers to coordinate their spearmint oil production with the expected market demand. Authority for this action is provided in §§ 985.50, 985.51, and 985.52 of the order.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by handlers. Historically, demand for spearmint oil tends to change slowly from year to year.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of spearmint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have little impact on the retail prices for those goods.

In 2013, 2014, and 2015, the Committee set salable percentages at levels that resulted in most, if not all, of the spearmint oil production being made available to the market. This was in response to the increased demand for spearmint oil from the Far West due to increased utilization by end-users and the reduced supply of spearmint oil coming from other production areas, both domestic and foreign.

Although there is still strong demand for spearmint oil, competing areas (mainly Canada) have experienced better than expected production in 2015 and will create some marketing pressure for spearmint oil from the Far West. In addition, the slowing of international markets for spearmint flavored products has negatively impacted the demand for domestically produced spearmint oil. Thus, the lower salable quantities and allotment percentages recommended by the Committee for the 2016–2017 marketing year are intended to be responsive to the changing environment of the spearmint oil market.

In the late 1990's, the Committee recommended higher than normal salable percentages in hopes of gaining market share. This approach did not work, and in the following years the salable percentage was reduced in order to work through the excess spearmint oil production and resulting build-up of inventory. In order to avoid a similar scenario moving forward, the Committee, relying heavily on the information provided to it by spearmint oil handlers during the October 21, 2015, meeting, ultimately recommended reducing the 2016–2017 marketing year salable percentages from the previous year to better align the available supply with market demand. The Committee reported that recent producer prices for spearmint oil are $18.00 to $20.00 per pound.

Spearmint oil production tends to be cyclical. Prior to the inception of the marketing order in 1980, extreme variability in producer prices was common. For example, the season average producer price for Washington Native spearmint oil in 1971 was $3.00 per pound. By 1975, the producer price had risen to $11.00 per pound, an increase of over 260 percent in just four years. Such fluctuations were not unusual in the spearmint oil industry in the years leading up to the promulgation of the order. For most producers, this was an untenable situation. Years of relatively high spearmint oil production, with demand remaining relatively stable, led to periods in which large producer stocks of unsold spearmint oil depressed producer prices. Shortages and high prices followed in subsequent years, as producers responded to price signals by cutting back production.

After establishment of the order, the supply and price variability in the spearmint oil market moderated. During the 20-year period from 1987 to 2006, the season average producer price for Native spearmint oil ranged from a high of $11.10 to a low $9.10 per pound, or a difference of 22 percent. No change in producer price from one year to the next during this period was more than $1.00 per pound. This is a remarkable record of price stability. From 2006 to 2008, prices jumped by $3.80 per pound as contracts tied to input costs were prevalent in the industry. During this time period, prices for fuel, fertilizer, and labor increased dramatically, resulting in higher contracted producer prices, and a resulting concurrent increase in the overall season average producer price for the industry.

The significant variability of the spearmint oil market is illustrated by the fact that the coefficient of variation (a standard measure of variability; "CV") of Far West spearmint oil producer prices for the period 1980–2014 (since the marketing order has been in effect) is 0.23, compared to 0.36 for the decade prior to the promulgation of the order (1970–79) and 0.49 for the prior 20-year period (1960–79). The coefficient of variation, as presented herein, was calculated by USDA from information provided by the Committee and the National Agricultural Statistics Service. This analysis provides an indication of the price stabilizing impact of the marketing order as higher CV values correspond to greater variability.

According to information compiled by the Committee, production in the shortest marketing year since the establishment of the order was about 47 percent of the 34-year average (1.92 million pounds from 1980 through 2014) and the largest crop was approximately 160 percent of the 34-year average. A key consequence is that, in years of oversupply and low prices, the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service).

The wide fluctuations in supply and prices that result from the cyclical nature of the spearmint oil industry, which were even more pronounced before the creation of the order, can create liquidity problems for some producers. The order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of increases to production costs. While prices for spearmint oil have been relatively steady, the cost of production has increased to the extent that plans to plant spearmint may be postponed or vacated indefinitely. Producers may also be enticed by the prices of alternative crops and their lower cost of production.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil. This is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil of each applicable class that the producer can market.

By December 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. Prior to December 1, such excess oil can be transferred to another producer to fill a deficiency in that producer's annual allotment as provided for in § 985.156(a).

The order allows limited quantities of excess oil to be sold by one producer to another producer to fill production deficiencies during a marketing year. A deficiency occurs when on-farm production is less than a producer's annual allotment. When a producer has a deficiency, the producer's own reserve oil can be utilized to fill that deficiency, or excess production (production of spearmint oil in excess of the producer's annual allotment) from another producer may also be secured to fill the deficiency. As mentioned previously, all of these provisions need to be exercised prior to December 1 of each year.

Excess spearmint oil not transferred to another producer to fill a deficiency is held in storage and, on December 1, is added to the reserve pool administered by the Committee pursuant to § 985.157. The Committee maintains the reserve pool for each class of spearmint oil. Once spearmint oil is placed in the reserve pool, such spearmint oil cannot enter the market during that marketing year unless USDA approves a Committee recommendation to increase the salable quantity and allotment percentage for a certain class of oil, subsequently making a portion of the reserve pool of that class of spearmint oil available to the market. Without an increase in the salable quantity and allotment percentage, spearmint oil placed in the reserve pool cannot be removed from the reserve pool and marketed in the marketing year in which it is initially placed in the reserve pool. However, producers may dispose of reserve spearmint oil from their own production, and held in their own account, under certain provisions in subsequent marketing years under the supervision of the Committee.

While the Committee administers the reserve pool of spearmint oil, ownership and physical possession of spearmint oil held in reserve does not transfer to the Committee. The Committee accounts for, and controls the release of, reserve spearmint oil, but does not take title to, or dispose of, any such oil of its own accord. Producers, at their sole discretion, make the decisions regarding the disposition of oil held in the reserve pool under any one of three possible mechanisms. First, producers may utilize reserve oil from their own production to fill intra-seasonal increases in the allotment percentage and salable quantity. Second, producers may fill an ensuing year's annual allotment from spearmint oil held in the reserve pool. Lastly, producers may exchange salable oil of the same class and quantity of reserve oil from their own production to rotate stock, so long as the Committee is properly notified and the oil is properly identified.

In any given year, the total available supply of spearmint oil is composed of current production plus salable carryover stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of salable spearmint oil to carry over into the subsequent marketing year. If the industry has production in excess of the salable quantity, the reserve pool absorbs the surplus quantity of spearmint oil, thereby withholding it from the market, unless such oil is needed to fill unanticipated intra-seasonal increases in demand. In this way, excess spearmint oil is not allowed to oversupply the market and create price instability. Likewise, if production is insufficient in any given year to fully supply the market with spearmint oil, the reserve pool oil can be released to satisfy the market demand until production can be increased.

Therefore, under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. Reserve pool stocks, which increase in high production years, are drawn down in years where the crop is short.

An econometric model generated by USDA was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied. This could result in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated trade demand for the 2016–2017 marketing year for both classes of oil at 2,175,000 pounds, and that the expected combined salable carry-in will be 376,409 pounds. This results in a combined required salable quantity of 1,798,591 pounds (2,175,000 pounds of trade demand less 376,409 pounds of carry-in). Under volume control, total sales of spearmint oil by producers for the 2016–2017 marketing year will be limited to 2,544,666 pounds (the recommended salable quantity for both classes of spearmint oil of 2,168,257 pounds plus 376,409 of carry-in). This total available supply of 2,544,666 pounds should be more than adequate to supply the 2,175,000 pounds of anticipated trade demand for spearmint oil.

The recommended allotment percentages, upon which 2016–2017 producer allotments are based, are 45 percent for Scotch spearmint oil and 50 percent for Native spearmint oil. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell an unrestricted quantity of spearmint oil. The USDA econometric model estimated that the season average producer price per pound (from both classes of spearmint oil) would decline about $1.45 per pound as a result of the higher quantities of spearmint oil that would be produced and marketed without volume control. The surplus situation for the spearmint oil market that would exist without volume controls in 2016–2017 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume control allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume control is believed to have little or no effect on consumer prices of products containing spearmint oil and should not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations submitted for approval for both classes of spearmint oil. The Committee discussed and rejected the idea of not regulating any volume for both classes of spearmint oil because of the severe price-depressing effects that would likely occur without volume control. The alternative to establish salable quantities and allotment percentages at the 2015–2016 marketing year's levels was discussed, but not put to any motion, for both classes of oil. The Committee also considered salable quantities and allotment percentages that were above and below the levels that were ultimately recommended for Scotch spearmint oil. Ultimately, the action taken by the Committee was to decrease the salable quantities and allotment percentages for both Class 1 and Class 3 spearmint oil from the 2015–2016 marketing year levels.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity.

Based on its review, the Committee believes that the salable quantities and allotment percentages will achieve the objectives sought. The Committee also believes that if there is no volume regulation in effect for the upcoming marketing year, the Far West spearmint oil industry would return to the pronounced cyclical price patterns that occurred prior to the promulgation of the order. As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. The salable quantities and allotment percentages established herein are expected to facilitate the goal of maintaining orderly marketing conditions for Far West spearmint oil for 2016–2017 and future marketing years.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule establishes the salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil and Class 3 (Native) spearmint oil produced in the Far West during the 2016–2017 marketing year. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 21, 2015, meeting was a public meeting and all entities, both large and small, were able to express views on the issues presented. A proposed rule concerning this action was published in the **Federal Register** on March 23, 2016 (81 FR 15450). A copy of the rule was provided to Committee staff, who in turn made it available to all Far West spearmint oil producers, handlers, and interested persons. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 15-day comment period ending April 7, 2016, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2016–2017 marketing year starts on June 1, 2016, and handlers will need to begin purchasing the spearmint oil allotted under this rulemaking. Further, handlers are aware of this rule, which was recommended at a public meeting. Finally, a 15-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 985.235 is added to read as follows:

§ 985.235 Salable quantities and allotment percentages—2016–2017 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2016, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 958,711 pounds and an allotment percentage of 45 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,209,546 pounds and an allotment percentage of 50 percent.

Dated: June 10, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–14163 Filed 6–14–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. No. AMS–CN–14–0037]

Cotton Board Rules and Regulations: Amending Importer Line-Item De Minimis

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations to remove the cotton import *de minimis* provision. The Cotton Research and Promotion (R&P) Program assesses U.S. cotton producers and importers of cotton and cotton-containing products. Importers are exempt from paying the cotton import assessment (known commonly among importers as the "cotton fee") if a line item on U.S. Customs and Border Protection (CBP) documentation is $2.00 or less. The exemption was initially established to lessen the administrative burden of collecting an import assessment, which was originally estimated to be $2.00 per line item, in instances in which the transactions costs of the collection would exceed the actual value of the assessment; however, technological advances in the CBP documentation process significantly reduced the transactions costs associated with collecting import assessments, and CBP has since stopped charging USDA for the processing and collecting of assessments. Given that transactions costs no longer exceed assessment rates of $2.00 or less, AMS is removing this *de minimis* provision from the regulations. In addition, the definition of cotton with respect to procedures for conducting the sign-up period is being modified.

DATES: *Effective Date:* July 15, 2016.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to access all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action has been designated as a "non-significant regulatory action" under section 3(f) of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Cotton Research and Promotion Act (7 U.S.C. 2101–2118) (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has examined the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be unduly or disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (importers) as having receipts of no more than $7,500,000. An estimated 17,000 importers are subject to the rules and regulations issued pursuant to the Cotton Research and Promotion Order. Most are considered small entities as defined by the Small Business Administration.

This rule only affects importers of cotton and cotton-containing products whose calculated assessment for any line item entry of cotton appearing on a CBP entry document is two dollars ($2.00) or less. While data allowing for estimates of the number of importers that will be impacted does not exist, it is estimated that a very small portion of the estimated 17,000 importers will be affected by eliminating the *de minimis* exemption. The additional burden placed on those importers will be limited to two dollars ($2.00) per line item entry that would otherwise have qualified for the exemption. Importers were already required to self-report on all line items being imported, therefore no additional transactions costs or administrative burden will be borne by these importers. Such importers may now be eligible to participate in a sign-up period to determine whether they and eligible producers favor the conduct of referendum on the continuance of the 1991 amendments to the Order.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. chapter 35) the information collection requirements contained in the amended regulation have been previously approved by OMB and were assigned control number 0581–0093, National Research, Promotion, and Consumer Information Programs. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

Background

Amendments to the Cotton Research and Promotion Act (7 U.S.C. 2101–2118) (Act) were enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624, 104 stat. 3909, November 28, 1990). These amendments contained two provisions that authorize changes in the funding procedures for the Cotton Research and Promotion Program. These provisions provide for: (1) The assessment of imported cotton and cotton products; and (2) termination of refunds to cotton producers. (Prior to the 1990 amendments to the Act, producers could request assessment refunds.)

As amended, the Cotton Research and Promotion Order (7 CFR part 1205) (Order) was approved by producers and importers voting in a referendum held July 17–26, 1991, and the amended Order was published in the **Federal Register** on December 10, 1991, (56 FR 64470). A proposed rule implementing the amended Order was published in the **Federal Register** on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181 and 57 FR 29431, respectively).

The total value of assessment levied on cotton imports is the sum of two parts. The first part of the assessment is based on the weight of cotton imported—levied at a rate of $1 per bale of cotton, which is equivalent to 500 pounds, or $1 per 226.8 kilograms of cotton. The second part of the import assessment (referred to as the supplemental assessment) is based on the value of imported cotton lint or the cotton contained in imported cotton products—levied at a rate of five-tenths of one percent of the value of domestically produced cotton. The current assessment on imported cotton is $0.012013 per kilogram of imported cotton.

The Act provides that "Any *de minimis* figure as established under this paragraph shall be such as to minimize the burden in administering the assessment provision but still provide for the maximum participation of imports of cotton in the assessment provisions of this chapter." 7 U.S.C. 2116(c)(2). The Import Assessment Table in paragraph (b)(3) of § 1205.510 of the Cotton Research and Promotion Rules and Regulations indicates the total assessment rate ($ per kilogram) due for each Harmonized Tariff Schedule (HTS) number that is subject to assessment. Subparagraph (i) of this same paragraph provides for an exemption from assessment for any line item entry of cotton appearing on U.S. Customs and Border Protection (CBP) entry documentation whose calculated assessment is two dollars ($2.00) or less. This *de minimis* exemption was established to minimize the administrative burden of collecting import assessments, which was originally estimated to be $2.00 per line item, where administrative costs would exceed the actual value of the assessment.

The *de minimis* figure is an estimate of administrative burden, which is equivalent to the transactions costs of collecting the cotton fee. The *de minimis* provision was necessary to avoid instances where the transactions costs of collecting the cotton fee exceeded the cotton fee being collected.

In January 2014, AMS became aware of CBP's automation processes in connection with documenting and collecting assessments. CBP indicated that the documentation and collection process is automated and costs have been significantly decreased. Taking into account technological advancements in the fee collection process, CBP no longer charges USDA for the collection of assessments on agricultural commodities. This has eliminated the administrative burden associated with the collection of assessments.

AMS is striking subparagraph (i) under paragraph § 1205.510(b)(3) of the Cotton Research and Promotion Rules and Regulations and appending to the paragraph section the language currently in subparagraph (ii). This action reflects the technological efficiencies of the CBP import documentation process by eliminating the *de minimis* provisions in the regulations, and, therefore, helps to ensure that the assessments collected on imported cotton and the cotton content of imported products will be the same as those paid on domestically produced cotton. In addition, AMS is modifying the definition of cotton in § 1205.12 to include imported cotton that previously was exempted due to the *de minimis* exemption. With this action, importers who previously imported *de minimis* amounts of cotton may now be eligible to participate in the sign-up period for a continuance referendum that would determine whether a continuance referendum is favored.

Summary of Comments

A proposed rule was published in the **Federal Register** on December 16, 2014, with a comment period of December 11, 2015, through January 11, 2016 (80 FR 76873). No comments were received by AMS. The proposed rule may be viewed at *www.regulations.gov.*

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and Recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

■ 1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

■ 2. Revise § 1205.12 to read as follows:

§ 1205.12 Cotton.

The term *cotton* means all Upland cotton harvested in the United States and all imports of Upland cotton, including the Upland cotton content of products derived thereof.

■ 3. In § 1205.510, paragraph (b)(3) is revised to read as set forth below (the Import Assessment Table remains unchanged):

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(3) The following table contains Harmonized Tariff Schedule (HTS) classification numbers and corresponding conversion factors and assessments. The left column of the following table indicates the HTS classifications of imported cotton and cotton-containing products subject to assessment. The center column indicates the conversion factor for determining the raw fiber content for each kilogram of the HTS. HTS numbers for raw cotton have no conversion factor in the table. The right column indicates the total assessment per kilogram of the article assessed. In the event that any HTS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the physical properties, description, or cotton content of the product involved, assessments will continue to be collected based on the new number.

* * * * *

Dated: June 10, 2016.

Elanor Starmer,

Administrator.

[FR Doc. 2016–14174 Filed 6–14–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1214

[Document Number AMS–SC–15–0072]

Christmas Tree Promotion, Research, and Information Order; Late Payment and Interest Charges on Past Due Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule prescribes late payment and interest charges on past due assessments under the Christmas Tree Promotion, Research, and

Information Order (Order). The Order is administered by the Christmas Tree Promotion Board (Board) with oversight by the U.S. Department of Agriculture (USDA). Under the Order, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand the market for fresh cut Christmas trees. This rule implements authority contained in the Order that allows the Board to collect late payment and interest charges on past due assessments. Late payment and interest charges will begin to accrue on unpaid assessments beginning 30 days after the effective date of this rule. This action contributes to effective administration of the program. This rule also provides authority for the crop year and fiscal period to be changed through administrative action. These changes were unanimously recommended by the Board.

DATES: *Effective* June 16, 2016.

FOR FURTHER INFORMATION CONTACT: Victoria Carpenter, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, Stop 0244, 1400 Independence Avenue SW., Room 1406–S, Washington, DC 20250–0244; telephone: (202) 720–9915; facsimile: (202) 205–2800; or electronic mail: *VictoriaM.Carpenter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under the Order (7 CFR part 1214). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act)(7 U.S.C. 7411–7425).

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action has been designated as a "non-significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This rule prescribes late payment and interest charges on past due assessments. The Order is administered by the Board with oversight by USDA. Under the Order, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand the market for fresh cut Christmas trees. This rule implements authority contained in the Order and the 1996 Act that allows the Board to collect late payment and interest charges on past due assessments. This action was unanimously recommended by the Board and will contribute to effective administration of the program.

Section 1214.52(a) of the Order specifies that the funds to cover the Board's expenses shall be paid from assessments on producers and importers, donations from persons not subject to assessments, and from other funds available to the Board. Paragraphs (b) and (c) specify that the collection of assessments on Christmas trees that are cut and sold or imported will be the responsibility of the producer who produces the Christmas trees or causes them to be cut, or the importer who imports Christmas trees for marketing in the United States.

Section 1214.52(e) specifies that "a late payment charge, may be imposed on any producer or importer who fails to remit to the Board, the total amount for which any such producer or importer is liable on or before the due date established by the Board. In addition to the late payment charge, an interest charge may be imposed on the outstanding amount for which the producer or importer is liable. The rate for late payment and interest charges shall be specified by the Secretary through rulemaking."

The Order was implemented in November 2011, but immediately stayed. The stay was lifted on April 7, 2014, and the program is currently in effect. Domestic assessments were due February 15, 2016. This will be the first assessment collection by the Board. Importers will be responsible for paying the assessment directly to the Board 30 calendar days after importation. U.S. Customs and Border Protection (Customs) will not be collecting on imports for the 2015 season. Producers or importers who domestically produce or import less than 500 trees annually are exempt from assessment.

This rule implements authority contained in the Order and the 1996 Act that allows the Board to collect late payment and interest charges on past due assessments.

Late payment and interest charges will begin to accrue on unpaid assessments beginning 30 days after the effective date of the final rule. A late payment charge of $250 will be applied to any unpaid assessments for producers and importers that are delinquent in paying their assessment. If the assessment is paid after February 15, but up to 29 days after the effective date of this final rule, no late payment charge will be imposed. The late payment charge will be increased to $500 after 90 days after the effective date of this final rule. Additionally, a 1.5 percent interest charge per month will be imposed on unpaid assessments and fees owed, beginning 30 days after the effective date of this final rule. The delay of the imposition of late payment and interest charges only applies to the initial period of assessment collection. Assessment funds are used by the Board for activities designed to benefit all industry members. Thus, it is important that all assessed entities pay their assessments in a timely manner. Entities who fail to pay their assessments on time would be able to reap the benefits of Board programs at the expense of others. In addition, they would be able to utilize funds for their own use that should otherwise be paid to the Board to finance Board programs.

Board Recommendation

The Board met on July 17, 2015, and unanimously recommended specifying rates of late payment charges and interest on past due assessments in the Order's regulations. Specifically, the Board recommended that a late payment charge of $250 be applied to late assessments for producers and importers that are delinquent in paying their assessment 30 days after the due date. The late payment charge will increase to $500 after 90 days of delinquency. Additionally, a 1.5 percent interest charge per month will be imposed on late assessments and fees owed, beginning 30 days after the assessment due date. This fee structure is not overtly burdensome on small producers or importers, but does create the incentive to promote timely payment of assessments due. This action contributes to the efficient administration of the program.

This action will help facilitate program administration by providing an incentive for entities to remit assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities. Accordingly, a new Subpart C is added to the Order for rules and regulations, and a new section 1214.520 is added to Subpart C.

This rule also makes one additional change to the Order. This rule revises the definition of crop year and fiscal period as defined in sections 1214.5 and 1214.8, respectively. The Board recommended this change because USDA revised the crop year and fiscal period during the promulgation process from what was originally proposed by the industry. The Board wants the flexibility to change these dates if necessary. The terms crop year and fiscal period will be revised by adding language to allow the Board to change the crop year or fiscal period administratively through Board action.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of this rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (producers and importers) as those having annual receipts of no more than $7.5 million.

According to the 2012 Census of Agriculture published by the National Agricultural Statistics Service (NASS), it is estimated that there are 15,494 farms that sold cut Christmas trees in the United States. According to NASS, the value of cut Christmas trees sold in 2012 was $808,644,000. Dividing that value by the number of farms yields an average annual producer revenue of $52,191. Therefore it is estimated that all farms that sold Christmas trees had revenue under $750,000.

Likewise, based on Customs data, it is estimated there are 153 importers of Christmas trees. Using 2014 Customs data, all importers import less than $7.5 million worth of Christmas trees annually. Thus, all domestic producers and importers of Christmas trees would be considered small entities.

Regarding the value of the commodity, as mentioned above, based on 2012 NASS Census of Agriculture data, the value of the domestic cut Christmas trees was about $808.6 million. According to Customs data, the value of 2014 imports was about $25.8 million.

This rule prescribes late payment and interest charges on past due assessments under the Order. The Order is administered by the Board with oversight by USDA. Under the Order, assessments are collected from producers and importers of Christmas trees that are cut and sold or imported.

This rule will add a new section 1214.520 that will specify a late payment charge of $250 to be applied to late assessments for producers and importers that are delinquent in paying their assessment 30 days after the due date. The late payment charge will be increased to $500 after 90 days of delinquency. Additionally, a 1.5 percent interest charge per month will be imposed on late assessments and fees owed, beginning 30 days after the assessment due date. This section will be included in a new Subpart C—Provisions Implementing the Christmas Tree Promotion, Research, and Information Order. This action was unanimously recommended by the Board and is authorized under section 1214.52(e) of the Order and section 517(e) of the 1996 Act.

In addition, one other change is being made to the Order. It will revise the definition of crop year and fiscal period as defined in sections 1214.5 and 1214.8, respectively. The Board recommended this change because USDA revised the crop year and fiscal period during the promulgation process from what was originally proposed by the industry. The Board wants the flexibility to change these dates if necessary. The terms crop year and fiscal period will be revised by adding language to allow the Board to change the crop year or fiscal period administratively through Board action.

Regarding the economic impact of this rule on affected entities, this action imposes no costs on producers and importers who pay their assessments on time. It merely provides an incentive for entities to remit their assessments in a timely manner. For all entities who are delinquent in paying assessments, both large and small, the charges will be applied uniformly. As for the impact on the industry as a whole, this action will help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities.

Additionally, as previously mentioned, the Order provides for an exemption for entities that produce or import less than 500 Christmas trees.

Regarding alternatives, one option to the action is to maintain the status quo and not prescribe late payment and interest charges for past due assessments. However, the Board determined that implementing such charges would help facilitate program administration by encouraging entities to pay their assessments in a timely manner. The Board reviewed rates of late payment and interest charges prescribed in other research and promotion programs and concluded that the late payment charge and the interest charge contained in this rule are appropriate.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved under OMB control number 0581–0093. This rule results in no changes to the information collection and recordkeeping requirements previously approved and imposes no additional reporting and recordkeeping burden on domestic producers and importers of Christmas trees.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, the Board met on July 17, 2015, and unanimously recommended these changes to the Order. All of the Board's meetings, including meetings held via teleconference, are open to the public and interested persons are invited to participate and express their views.

A proposed rule concerning this action was published in the **Federal Register** on March 1, 2016 (81 FR 10530). The proposal was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending March 16, 2016, was provided to allow interested persons to submit comments. No comments were received.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the 1996 Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this is the initial year for the collection of assessments under the Order, on the 2015 harvest, and assessments were due on February 15, 2016. Importers are responsible for paying assessments directly to the Board 30 calendar days after importation. The Board would like to implement this incentive as soon as possible to facilitate the initial collection of assessments. Additionally, this action was unanimously recommended by the Board. Further, a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 1214

Administrative practice and procedure, Advertising, Consumer information, Christmas trees, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1214 is amended as follows:

PART 1214—CHRISTMAS TREE PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1214 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. Section 1214.5 is revised to read as follows:

§ 1214.5 Crop year.

Crop year means the period August 1 through July 31 or such other period approved by the Secretary.

■ 3. Section 1214.8 is revised to read as follows:

§ 1214.8 Fiscal period.

Fiscal period means the period August 1 through July 31 or such other period approved by the Secretary.

■ 4. Subpart C, consisting of § 1214.520, is added to read as follows:

Subpart C—Provisions Implementing the Christmas Tree Promotion, Research, and Information Order

§ 1214.520 Late payment and interest charges for past due assessments.

(a) A late payment charge shall be imposed on any producer or importer who fails to make timely remittance to the Board of the total assessments for which such producer or importer is liable. The late payment charge will be imposed on any assessments not received within 30 calendar days of the date they are due. This one-time late payment charge shall be $250 and will be increased to $500 after 90 days of delinquency.

(b) In addition to the late payment charge, 1.5 percent per month interest on the outstanding balance, including any late payment charge and accrued interest, will be added to any accounts for which payment has not been received by the Board within 30 calendar days after the date the assessments are due. Such interest will continue to accrue monthly until the outstanding balance is paid to the Board.

Dated: June 10, 2016.

Elanor Starmer,

Administrator.

[FR Doc. 2016–14150 Filed 6–14–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3635; Directorate Identifier 2015–NM–037–AD; Amendment 39–18553; AD 2016–12–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A318 series airplanes; A319 series airplanes; A320–211, –212, –214, –231, –232, and –233 airplanes; and A321 series airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that certain structural repair manual (SRM) inspection requirements for the fuselage skin repairs are insufficient to detect cracks. This AD requires an inspection to determine whether any fuselage external skin (doubler) repairs have been accomplished, an inspection for cracking of certain repaired external fuselage skin areas in the fuselage, and repair if necessary. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective July 20, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 20, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3635.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://*

www.regulations.gov by searching for and locating Docket No. FAA–2015–3635; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A318 series airplanes; A319 series airplanes; A320–211, –212, –214, –231, –232, and –233 airplanes; and A321 series airplanes. The NPRM published in the **Federal Register** on September 28, 2015 (80 FR 58226) (“the NPRM”). The NPRM was prompted by an evaluation by the DAH indicating that the fuselage skin repairs are subject to WFD. The NPRM proposed to require an inspection to determine whether any fuselage external skin (doubler) repairs have been accomplished, an inspection for cracking of certain repaired external fuselage skin areas in the fuselage, and repair if necessary. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin, which could result in reduced structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0036R1, dated March 31, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition on all Airbus Model A318 series airplanes; A319 series airplanes; A320–211, –212, –214, –231, –232, and –233 airplanes, and A321 series airplanes. The MCAI states:

> During A320 family Extended Service Goal full scale fatigue tests, it was demonstrated that the inspection thresholds defined in the current Structural Repair Manual (SRM) for the A320 family skin repairs are insufficient to detect possible cracks becoming after repairs. The findings are limited to 1.2 [millimeter] (mm) fuselage skin and cover for all cut-out external repairs. The internal repairs are not affected.
>
> This condition, if not detected and corrected, could affect the structural integrity of the fuselage at the repaired skin area(s).
>
> To address this potential unsafe condition, Airbus issued Alert Operators Transmission (AOT) A53N007–14 to provide inspection instructions.
>
> For the reasons described above, EASA issued AD 2015–0036 [*http://www.casa.gov.au/scripts/nc.dll?WCMS:OLDASSET::svPath=/ADFiles/over/a320/,svFileName=2015-0036.pdf*] to require a one-time inspection of the affected areas and, depending on findings, accomplishment of applicable repair instructions.
>
> Since that [EASA] AD was issued, operators have questioned the inspection threshold for A318 aeroplanes (not yet in the Airbus AOT), which is actually identical to that for A319 aeroplanes. In addition, an error has been detected in paragraph (1) [of the EASA AD], since external doublers may have been installed in the affected area by a modification that may not be recorded as repair.
>
> Such doubler installations are also subject to the inspection requirements of this [EASA] AD, which is therefore revised to provide clarifications, correcting paragraph (1) [of the EASA AD] and introducing a Note.

Required actions include an inspection to determine whether any fuselage external skin (doubler) repairs have been accomplished, an external ultrasonic inspection or an internal low/high frequency eddy current inspection for cracking of certain repaired external fuselage skin areas in the fuselage, and repair if necessary. The compliance times vary depending on airplane configuration. The earliest compliance time is within 25,200 flight cycles since last repair, or within 350 flight cycles after the effective date of the AD, whichever occurs later. The latest compliance time is within 45,000 flight cycles since last repair; within 1,500 flight cycles from the effective date of the AD, without exceeding 49,100 flight cycles since last repair; or within 350 flight cycles since the effective date of the AD; whichever occurs latest. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3635.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received. The following presents the comments received on the NPRM and the FAA’s response to each comment.

Support for the NPRM

Mr. Bryant Kerr stated that the NPRM is an excellent idea, and it is always worth improving safety on airplanes.

Request To Revise Applicability

United Airlines (UAL) requested that we revise the NPRM applicability to apply only to airplanes having repairs that were completed before May 1, 2015, the date of the revised service repair manual (SRM). UAL stated that any new airplane deliveries or external repairs accomplished after the updated SRM thresholds will presumably have the correct thresholds contained in the maintenance/inspection program.

We partially agree with UAL’s request. We agree that airplanes with repairs accomplished using the updated SRM will be in compliance with certain sections of this AD, such as the timescale for the inspection, which is a subset of the AD requirements. However, the SRM update will not replace the remaining AD requirements, which must be applicable to all airplanes identified in paragraph (c) of this AD. We have not changed this AD in this regard.

Request To Exclude Inspected Airplanes

Delta Airlines (DAL) stated that since certain repairs and modifications on its airplanes have already had their first inspection prior to the compliance time specified in the NPRM, the NPRM requirements should not apply. DAL also stated that if an operator’s maintenance/inspection program is more stringent than the requirements of paragraph (m) of the proposed AD, the operator should be excluded from the NPRM requirements.

We disagree with DAL’s request. Accomplishment of the first inspection is only part of the actions required by this AD. Paragraph (m) of this AD requires revision of the post-repair inspection threshold(s) in the operator’s maintenance program or inspection program. This AD includes the minimum requirements for mitigating the identified unsafe condition. However, under the provisions of paragraph (n)(1) of this AD, we will consider requests for approval of different methods of compliance if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. We have not changed this AD in this regard.

Request To Revise Compliance Time

DAL requested a compliance time extension from 350 flight cycles to 6 months. DAL stated that depending on the fleet utilization, an operator of a large, older fleet could be required to accomplish the compliance rework within a few months, thereby creating a significant impact on its available resources. DAL also stated that it is possible that several airplanes will be grounded because it may not have enough resources to comply with the 350-flight-cycle limit.

We do not agree with DAL's request. DAL's rationale for a compliance time extension does not provide an acceptable level of safety. The compliance time of this AD is based on a risk assessment. Some safety issues are more time sensitive than others. We have considered the compliance time established by EASA, and the overall risk to the fleet, including the severity of the identified unsafe condition and the likelihood of the occurrence of the unsafe condition, to determine the compliance time. However, under the provisions of paragraph (n)(1) of this AD, operators may apply for an extension of the compliance time by providing a satisfactory rationale explaining why a compliance time extension provides an acceptable level of safety. We have not changed this final rule in this regard.

Request To Clarify Requirements and Approve Certain Repair Information Sources

DAL requested that we make a distinction that the NPRM requirements apply only to external repair fasteners common to the 1.2-millimeter (mm) skin. DAL also stated that we should approve category B repairs done using the latest revision of the SRM and any repair design approval sheet (RDAS) approved after July 1, 2014. DAL stated that the applicable Airbus SRM repair inspection thresholds have been revised this year to address certain inadequacies.

We do not agree with DAL's requests. Paragraph (g) of this AD already requires an inspection to determine whether any fuselage doubler repairs have been accomplished on affected fuselage sections with a skin thickness of 1.2 mm. DAL did not substantiate how the corrective actions in any RDAS for category "B" repairs approved after July 1, 2014, and the latest revision of the SRMs would adequately address the unsafe condition. However, the commenter may use the provisions of paragraph (n)(2) of this AD for obtaining corrective actions from a manufacturer. We have not changed this AD in this regard.

Request To Clarify Inspection Timeframes

UAL requested clarification on how the NPRM addresses detection of cracking in the timeframe between the inspection threshold specified in the NPRM and Airbus Alert Operators Transmission A53N007–14, dated July 22, 2014, and the repetitive inspections specified in the SRM. UAL stated that the compliance time has a short threshold if the repair records are inconclusive, which is as early as 350 flight cycles from the effective date of the AD; therefore, the initial inspection could be accomplished much earlier than the crack detection period.

We agree to clarify the inspection timeframes. The 350-flight-cycle compliance time is a second option to the compliance time specified in Airbus Alert Operators Transmission A53N007–14, dated July 22, 2014. The compliance time is based on a risk assessment that takes into consideration the fatigue crack length propagation. We have considered the compliance time established by EASA, and the overall risk to the fleet, including the severity of the identified unsafe condition and the likelihood of the occurrence of the unsafe condition. No change to the AD is necessary in this regard.

Request To Correct Non-Destructive Testing Manual (NTM) Task Numbers

DAL stated that Airbus Alert Operators Transmission A53N007–14, dated July 22, 2014, references incorrect formatting of NTM task numbers. DAL stated the formatting should be "51–10–15–270–801–A01" and "51–10–16–250–801–A01," and not "51–10–15–270–801–A–01" and "51–10–16–250–801–A–01."

We disagree with DAL's statement. NTM task numbers 51–10–15–270–801–A–01 and 51–10–16–250–801–A–01 are correctly referenced in Airbus Alert Operators Transmission A53N007–14, dated July 22, 2014, and in the Airbus A318/319/320/321 Non-Destructive Testing Manual. We have not changed this AD in this regard.

Clarification of Unsafe Condition Language

We revised the description of the precipitating event in the **SUMMARY** and paragraph (e) of this AD to correspond to the wording used in the MCAI AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

Airbus has issued Alert Operators Transmission A53N007–14, dated July 22, 2014. The service information describes procedures for an inspection to detect cracking on repaired 1.2-millimeter fuselage skin areas on fuselage sections 11, 12, 13, 14, 16, and 17 at external doubler repairs. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 940 airplanes of U.S. registry.

We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $159,800, or $170 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–12–04 Airbus: Amendment 39–18553. Docket No. FAA–2015–3635; Directorate Identifier 2015–NM–037–AD.

(a) Effective Date

This AD becomes effective July 20, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes specified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that certain structural repair manual (SRM) inspection requirements for the fuselage skin repairs are insufficient to detect cracks. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin, which could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection To Determine Repair Areas

At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD: Do an inspection to determine whether any fuselage external skin (doubler) repairs have been accomplished on fuselage sections 11, 12, 13, 14, 16, and 17 with a skin thickness of 1.2 millimeters. A review of airplane maintenance records is acceptable in lieu of this inspection if the identification of applicable repairs can be conclusively determined from that review.

(1) For Model A319, A320, and A321 series airplanes: Except as specified in paragraphs (h)(1) and (h)(2) of this AD, at the applicable time specified in paragraphs 4.1.1.b. and 4.1.1.c. of the "Accomplishment Timescale" of Airbus Alert Operators Transmission (AOT) A53N007–14, dated July 22, 2014, or within 350 flight cycles after the effective date of this AD, whichever occurs later.

(2) For Model A318 series airplanes: Except as specified in paragraphs (h)(1) and (h)(2) of this AD, at the Model A319 airplane time specified in paragraphs 4.1.1.b. and 4.1.1.c. of the "Accomplishment Timescale" of Airbus AOT A53N007–14, dated July 22, 2014, or within 350 flight cycles after the effective date of this AD, whichever occurs later.

(h) Exceptions to Service Information

(1) Where paragraphs 4.1.1.b. and 4.1.1.c. of the "Accomplishment Timescale" of Airbus AOT A53N007–14, dated July 22, 2014, specify "FC," this AD specifies "flight cycles."

(2) Where paragraphs 4.1.1.b. and 4.1.1.c. of the "Accomplishment Timescale" of Airbus AOT A53N007–14, dated July 22, 2014, specify "from AOT issuance," this AD specifies "as of the effective date of this AD."

(i) Inspection for Cracking

If, during the inspection required by paragraph (g) of this AD, it is determined that any fuselage external skin (doubler) repair has been accomplished on fuselage section 11, 12, 13, 14, 16, or 17: At the applicable time specified paragraph (g)(1) or (g)(2) of this AD, do an external ultrasonic inspection or an internal low frequency eddy current (LFEC) inspection for cracking of all of the repaired 1.2-millimeter (mm) fuselage skin areas, in accordance with the instructions specified in paragraph 4.2.2, "Inspection Requirements," of Airbus AOT A53N007–14, dated July 22, 2014, except as provided by paragraph (j) of this AD.

(j) Optional Inspection for Cracking

As an optional method of compliance to the ultrasonic inspection or LFEC inspection required by paragraph (i) of this AD: Do a high frequency eddy current (HFEC) inspection for cracking in the cut-out surrounding the fastener area, at and in front (approximately 10–15 millimeters) of the fastener row, after doubler removal and before any new extended doubler installation, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(k) Optional Repetitive Inspections

In lieu of doing the inspection required by paragraph (i) of this AD: Within the applicable compliance time specified in paragraph 4.1.1, "Accomplishment Timescale," of Airbus AOT A53N007–14, dated July 22, 2014, after accomplishing the inspections required by paragraph (g) of this AD, do a detailed inspection or HFEC inspection and repeat the inspection thereafter within the applicable compliance times specified in paragraph 4.1.1, "Accomplishment Timescale," of Airbus AOT A53N007–14, dated July 22, 2014. The inspections must be done in accordance with the instructions of paragraph 4.2.2, "Inspection Requirements," of Airbus AOT A53N007–14, dated July 22, 2014. For Model A318 series airplanes, use the applicable compliance times and instructions specified in Airbus AOT A53N007–14, dated July 22, 2014, that are specified for Model A319 series airplanes.

(l) Repair

If any crack is found during any inspection required by paragraph (i), (j), or (k) of this AD: Before further flight, repair the cracking, in accordance with the instructions of paragraph 4.2.3, "Findings," of Airbus AOT A53N007–14, dated July 22, 2014, except where Airbus AOT A53N007–14, dated July 22, 2014, specifies to contact Airbus for a repair design approval sheet or for further instructions, this AD requires repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(m) FAA-Approved Maintenance or Inspection Program Revision

Concurrently with the accomplishment of any repair required by paragraph (l) of this AD, revise the post-repair inspection threshold(s) in the applicable FAA-approved maintenance program or inspection program, as applicable, in accordance with the instructions specified in paragraph 4.1.1, "Accomplishment Timescale," of Airbus AOT A53N007–14, dated July 22, 2014; except for Model A318 series airplanes use the instructions specified for Model A319 series airplanes.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0036R1, dated March 31, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3635.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Alert Operators Transmission A53N007–14, dated July 22, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 31, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13741 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7057; Directorate Identifier 2016–CE–017–AD; Amendment 39–18557; AD 2016–12–08]

RIN 2120–AA64

Airworthiness Directives; GROB Aircraft AG Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for GROB Aircraft AG Model G115EG airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks in the bonded joint of the rear horizontal stabilizer frame. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective July 20, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 20, 2016.

We must receive comments on this AD by August 1, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact GROB Aircraft AG, Product Support, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany, telephone: + 49 (0) 8268–998–105; fax: + 49 (0) 8268–998–200; email: *productsupport@grob-aircraft.com;* Internet: *grob-aircraft.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2016–7057.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7057; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2016–0091, dated May 16, 2016 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Cracks were found in the bonded joint of the rear horizontal stabiliser frame of G 115E aeroplanes.
>
> This condition, if not detected and corrected, may lead to crack propagation into primary structural elements, with detrimental effect on the structural integrity of the aeroplane.
>
> To address this potential unsafe condition, GROB issued Service Bulletin (SB) MSB1078–200 (hereafter referred to as "the SB" in this AD) to provide instructions for inspections and corrective action.
>
> For the reason described above, this AD requires repetitive inspections of the rear horizontal stabilizer frame and modification of the affected structure.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7057.

Related Service Information Under 1 CFR Part 51

GROB Aircraft AG has issued Service Bulletin No. MSB1078–200, dated February 25, 2016. The service information describes procedures for repetitive inspections of the rear horizontal stabilizer frame for cracks and procedures for repair if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of the AD.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because there are no airplanes currently on the U.S. registry and thus, does not have any impact upon the public. Therefore, we find that notice and opportunity for prior public comment are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–7057; Directorate Identifier 2016–CE–017–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD will affect 0 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $0, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 15 work-hours and require parts costing $60, for a cost of $1,335 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2016–12–08 GROB Aircraft AG: Amendment 39–18557; Docket No. FAA–2016–7057; Directorate Identifier 2016–CE–017–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective July 20, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Grob Aircraft AG Models G115EG airplanes, serial numbers up to and including 82323/E, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 53: Fuselage.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks in the bonded joint of the rear horizontal stabilizer frame. We are issuing this AD to detect and correct cracks in the bonded joint of the rear horizontal stabilizer frame, which if not corrected could propagate into the primary structural elements of the airplane and affect its structural integrity.

(f) Actions and Compliance

Unless already done, do the actions in paragraphs (f)(1) through (6) of this AD.

(1) Within the next 50 hours time-in-service (TIS) after July 20, 2016 (the effective

date of this AD), and repetitively thereafter at intervals not to exceed 50 hours, inspect the rear horizontal stabilizer frame following the Accomplishment Instructions in section 1.8, Part A, of GROB Aircraft AG Service Bulletin (SB) No. MSB1078–200, dated February 25, 2016.

(2) If any crack within the green area as defined in Figure 2 of the Accomplishment Instructions in section 1.8, Part A, of GROB Aircraft AG Service Bulletin (SB) No. MSB1078–200, dated February 25, 2016, is found during any inspection required in paragraph (f)(1) of this AD, before further flight, install a temporary placard stating "NO AEROBATICS, NO SPINS AND NO SIDE SLIPS ALLOWED" in full view of the pilot(s) and place a copy of this AD in the airplane flight manual (AFM); and after each day of flight operations, do a crack propagation inspection following the Accomplishment Instructions in Section 1.8, Part B, of GROB Aircraft AG SB No. MSB1078–200, dated February 25, 2016.

(3) If any crack within the red area as defined in Figure 2 of the Accomplishment Instructions in section 1.8, Part A, of GROB Aircraft AG Service Bulletin (SB) No. MSB1078–200, dated February 25, 2016, is found during any inspection required by this AD, before further flight, repair the affected area following the Accomplishment Instructions in Section 1.8, Part C, of GROB Aircraft AG SB No. MSB1078–200, dated February 25, 2016.

(4) Within the next 19 months after July 20, 2016 (the effective date of this AD), unless already done as required by paragraph (f)(3) of this AD, modify the airplane following the Accomplishment Instructions in Section 1.8, Part C, of GROB Aircraft AG SB No. MSB1078–200, dated February 25, 2016.

(5) After modification of the airplane as required by paragraph (f)(3) or (4) of this AD, remove the placard installed as required in paragraph (f)(2) of this AD and remove the copy of this AD from the applicable AFM.

(6) Modification of an airplane as required in paragraph (f)(3) or (4) of this AD, as applicable, constitutes terminating action for the repetitive inspections required in paragraph (f)(1) and (2) of this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2016–0091, dated May 16, 2016, for related. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7057.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) GROB Aircraft AG Service Bulletin No. MSB1078–200, dated February 25, 2016.

(ii) Reserved.

(3) For GROB Aircraft AG service information identified in this AD, contact GROB Aircraft AG, Product Support, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany, telephone: + 49 (0) 8268–998–105; fax: + 49 (0) 8268–998–200; email: *productsupport@grob-aircraft.com;* Internet: *grob-aircraft.com.*

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7057.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on June 6, 2016.

Robert Busto,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–7524; Directorate Identifier 2014–NM–231–AD; Amendment 39–18554; AD 2016–12–05]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2014–15–04 for certain Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. AD 2014–15–04 required deactivating the potable water system, or alternatively filling and activating the potable water system. This new AD requires inspecting the in-line heater for correct brazing and corrective action if needed, and installing a shrinkable tube on the water line and a spray shield on the in-line heater. This AD was prompted by a report of rudder pedal restriction which was the result of water leakage at the inlet tubing of an in-line heater in the lower part of the forward fuselage. This AD was also prompted by the development of a modification that would address the unsafe condition. We are issuing this AD to prevent rudder pedal restriction due to the pitch control mechanism becoming frozen as the result of water spray, which could prevent disconnection of the pitch control mechanism and normal pitch control, and consequently result in reduced controllability of the airplane.

DATES: This AD is effective July 20, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 20, 2016.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of September 9, 2014 (79 FR 45337, August 5, 2014).

ADDRESSES: For service information identified in this final rule, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab340techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue

SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7524.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7524; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2014–15–04, Amendment 39–17906 (79 FR 45337, August 5, 2014) (“AD 2014–15–04”). AD 2014–15–04 applied to certain Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. The NPRM published in the **Federal Register** on December 17, 2015 (80 FR 78702) (“the NPRM”). The NPRM was prompted by a report of rudder pedal restriction which was the result of water leakage at the inlet tubing of an in-line heater in the lower part of the forward fuselage. The NPRM was also prompted by the development of a modification that would address the unsafe condition. The NPRM proposed to continue to require deactivating the potable water system, or alternatively filling and activating the potable water system. The NPRM also proposed to require inspecting the in-line heater for correct brazing and corrective action if needed, and installing a shrinkable tube on the water line and a spray shield on the in-line heater. We are issuing this AD to prevent rudder pedal restriction due to the pitch control mechanism becoming frozen as the result of water spray, which could prevent disconnection of the pitch control mechanism and normal pitch control, and consequently result in reduced controllability of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0255, dated November 25, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. The MCAI states:

> One occurrence of rudder pedal restriction was reported on a SAAB 2000 aeroplane. Subsequent investigation showed that this was the result of water leakage at the inlet tubing for the in-line heater (25HY) in the lower part of the forward fuselage (Zone 116). The in-line heater attachment was found ruptured, which resulted in water spraying in the area. Frozen water on the rudder control mechanism in Zone 116 then led to the rudder pedal restriction.
>
> Analysis after the reported event indicated that the pitch control mechanism (including pitch disconnect/spring unit) may also be frozen as a result of water spray, which would prevent disconnection and normal pitch control.
>
> This condition, if not corrected, could result in further occurrences of reduced control of an aeroplane.
>
> To address this potential unsafe condition, SAAB issued Service Bulletin (SB) 2000–38–10 to provide instructions to deactivate the Potable Water System. Consequently, EASA issued [an EASA] Emergency AD * * * to require that action. That [EASA] Emergency AD was revised and republished as EASA AD 2013–0172R1 [(*http://ad.easa.europa.eu/ad/2013-0172R1*), which corresponds to FAA AD 2014–15–04, Amendment 39–17906 (79 FR 45337, August 5, 2014)], introducing a temporary alternative procedure for filling, which would allow reactivation and operation of the Potable Water System.
>
> Since that [EASA] AD was issued, SAAB developed an in-line heater spray shield and a water line shrink tube to eliminate the consequences of a water spray leak in case of rupture of the in-line heater. SAAB also issued a SB 2000–38–011, providing instructions for inspection of the in-line heater and installation of a shrink tube and a spray shield.
>
> For reasons described above, this [EASA] AD retains the requirements of EASA AD 2013–0172R1, which is superseded, and requires inspection [for correct brazing] of the in-line heater [and corrective action if needed] and installation of shrink tube [on water line] and spray shield [on in-line heater].

Corrective actions include repairing or replacing the in-line heater. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7524.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Saab Service Bulletin 2000–38–011, dated October 22, 2014. The service information describes procedures for inspecting for correct brazing of the in-line heater, repairing or replacing the in-line heater, and installing a shrinkable tube on the water line and a spray shield on the in-line heater. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 1 airplane of U.S. registry.

The actions required by AD 2014–15–04, Amendment 39–17906 (79 FR 45337, August 5, 2014), and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Required parts cost $0 per product. Based on these figures, the estimated cost of the actions that are required by AD 2014–15–04 is $85 per product.

We also estimate that it takes about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $3,650 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $4,160.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2014–15–04, Amendment 39–17906 (79 FR 45337, August 5, 2014), and adding the following new AD:

2016–12–05 Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems): Amendment 39–18554. Docket No. FAA–2015–7524; Directorate Identifier 2014–NM–231–AD.

(a) Effective Date

This AD is effective July 20, 2016.

(b) Affected ADs

This AD replaces AD 2014–15–04, Amendment 39–17906 (79 FR 45337, August 5, 2014) ("AD 2014–15–04").

(c) Applicability

This AD applies to Saab AB, Saab Aeronautics (formerly known as Saab AB, Saab Aerosystems) Model SAAB 2000 airplanes, certificated in any category, serial numbers 004 through 016 inclusive, 018, 022, 023, 024, 026, 029, 031, 032, 033, 035 through 039 inclusive, 041 through 044 inclusive, 046, 047, 048, 051, and 053 through 063 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 38, Water/Waste.

(e) Reason

This AD was prompted by a report of rudder pedal restriction which was the result of water leakage at the inlet tubing of an in-line heater in the lower part of the forward fuselage. This AD was also prompted by the development of a modification that would address the unsafe condition. We are issuing this AD to prevent rudder pedal restriction due to the pitch control mechanism becoming frozen as the result of water spray, which could prevent disconnection of the pitch control mechanism and normal pitch control, and consequently result in reduced controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Deactivation of Potable Water System With New Exception

This paragraph restates the requirements of paragraph (g) of AD 2014–15–04, with a new exception. Except as provided by paragraph (l) of this AD, within 30 days after September 9, 2014 (the effective date of AD 2014–15–04), deactivate the potable water system, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–38–010, dated July 12, 2013.

(h) Retained Alternative to Deactivation of Potable Water System With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2014–15–04, with no changes. As an alternative, or subsequent, to the action required by paragraph (g) of this AD, during each filling of the potable water system after September 9, 2014, accomplish the temporary filling procedure, in accordance with the instructions in Saab Service Newsletter SN 2000–1304, Revision 01, dated September 10, 2013, including Attachment 1 Engineering Statement to Operator 2000PBS034334, Issue A, dated September 9, 2013.

(i) New Inspection and Installation

At the applicable compliance times specified in paragraphs (j)(1) and (j)(2) of this AD, concurrently accomplish the actions specified in paragraphs (i)(1) and (i)(2) of this AD, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–38–011, dated October 22, 2014.

(1) Do a detailed inspection for correct brazing of the in-line heater, and if any discrepancy is found, before further flight, and before accomplishment of the modification required by paragraph (i)(2) of this AD, accomplish all applicable corrective actions.

(2) Install a shrink tube on the water line and a spray shield on the in-line heater.

(j) Compliance Times for Inspection and Installation

Do the actions specified in paragraph (i) of this AD at the applicable times specified in paragraphs (j)(1) and (j)(2) of this AD.

(1) For airplanes having had the potable water system reactivated and operated using the alternative filling procedure specified in Saab Service Newsletter SN 2000–1304, Revision 01, dated September 10, 2013, including Attachment 1 Engineering Statement to Operator 2000PBS034334, Issue A, dated September 9, 2013: Within 6 months after the effective date of this AD.

(2) For airplanes having the potable water system deactivated using procedures specified in the Accomplishment Instructions of Saab Service Bulletin 2000–38–010, dated July 12, 2013: Before further flight after the reactivation of the potable water system.

(k) Terminating Actions for the Deactivation of the Potable Water System

Accomplishing the actions required by paragraph (i) of this AD terminates the requirements of paragraphs (g) and (h) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(ii) AMOCs approved previously in accordance with AD 2014–15–04 are approved as AMOCs for the corresponding provisions of paragraphs (g) and (h) of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement

in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Saab AB, Saab Aeronautics' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2014–0255, dated November 25, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7524.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on July 20, 2016.

(i) Saab Service Bulletin 2000–38–011, dated October 22, 2014.

(ii) Reserved.

(4) The following service information was approved for IBR on September 9, 2014 (79 FR 45337, August 5, 2014).

(i) Saab Service Bulletin 2000–38–010, dated July 12, 2013.

(ii) Saab Service Newsletter SN 2000–1304, Revision 01, dated September 10, 2013, including Attachment 1 Engineering Statement to Operator 2000PBS034334, Issue A, dated September 9, 2013.

(5) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab340techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.*

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 31, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13740 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Docket No. FAA 2014–0463]

Policy on the Non-Aeronautical Use of Airport Hangars

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of final policy.

SUMMARY: This action clarifies the FAA's policy regarding storage of non-aeronautical items in airport facilities designated for aeronautical use. Under Federal law, airport operators that have accepted federal grants and/or those that have obligations contained in property deeds for property transferred under various Federal laws such as the Surplus Property Act generally may use airport property only for aviation-related purposes unless otherwise approved by the FAA. In some cases, airports have allowed non-aeronautical storage or uses in some hangars intended for aeronautical use, which the FAA has found to interfere with or entirely displace aeronautical use of the hangar. At the same time, the FAA recognizes that storage of some items in a hangar that is otherwise used for aircraft storage will have no effect on the aeronautical utility of the hangar. This action also amends the definition of aeronautical use to include construction of amateur-built aircraft and provides additional guidance on permissible non-aeronautical use of a hangar."

DATES: The policy described herein is effective July 1, 2017.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, Manager, Airport Compliance Division, ACO–100, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3085; facsimile: (202) 267–4629.

ADDRESSES: You can get an electronic copy of this Policy and all other documents in this docket using the Internet by:

(1) Searching the Federal eRulemaking portal (*http://www.faa.gov/regulations/search);*

(2) Visiting FAA's Regulations and Policies Web page at (*http://www.faa.gov/regulations_policies);* or

(3) Accessing the Government Printing Office's Web page at (*http://www.gpoaccess.gov/index.html).*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Airport Compliance and Management Analysis, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3085. Make sure to identify the docket number, notice number, or amendment number of this proceeding.

SUPPLEMENTARY INFORMATION:

Authority for the Policy: This document is published under the authority described in Title 49 of the United States Code, Subtitle VII, part B, chapter 471, section 47122(a).

Background

Airport Sponsor Obligations

In July 2014, the FAA issued a proposed statement of policy on use of airport hangars to clarify compliance requirements for airport sponsors, airport managers, airport tenants, state aviation officials, and FAA compliance staff. (79 **Federal Register** (FR) 42483, July 22, 2014).

Airport sponsors that have accepted grants under the Airport Improvement Program (AIP) have agreed to comply with certain Federal policies included in each AIP grant agreement as sponsor assurances. The Airport and Airway Improvement Act of 1982 (AAIA) (Pub. L. 97–248), as amended and recodified at 49 United States Codes (U.S.C.) 47107(a)(1), and the contractual sponsor assurances require that the airport sponsor make the airport available for aviation use. Grant Assurance 22, *Economic Nondiscrimination,* requires the sponsor to make the airport available on reasonable terms without unjust discrimination for aeronautical activities, including aviation services. Grant Assurance 19, *Operation and Maintenance,* prohibits an airport sponsor from causing or permitting any activity that would interfere with use of airport property for airport purposes. In some cases, sponsors who have received property transfers through surplus property and nonsurplus property agreements have similar federal obligations.

The sponsor may designate some areas of the airport for non-aviation use,[1] with FAA approval, but aeronautical facilities of the airport must be dedicated to use for aviation purposes. Limiting use of aeronautical facilities to aeronautical purposes ensures that airport facilities are available to meet aviation demand at the airport. Aviation tenants and aircraft owners should not be displaced by non-aviation commercial uses that could be conducted off airport property.

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[1] The terms "non-aviation" and "non-aeronautical" are used interchangeably in this Notice.

It is the longstanding policy of the FAA that airport property be available for aeronautical use and not be available for non-aeronautical purposes unless that non-aeronautical use is approved by the FAA. Use of a designated aeronautical facility for a non-aeronautical purpose, even on a temporary basis, requires FAA approval. *See* FAA Order 5190.6B, *Airport Compliance Manual,* paragraph 22.6, September 30, 2009. The identification of non-aeronautical use of aeronautical areas receives special attention in FAA airport land use compliance inspections. *See* Order 5190.6B, paragraphs 21.6(f)(5).

Areas of the airport designated for non-aeronautical use must be shown on an airport's Airport Layout Plan (ALP). The AAIA, at 49 U.S.C. 47107(a)(16), requires that AIP grant agreements include an assurance by the sponsor to maintain an ALP in a manner prescribed by the FAA. Sponsor assurance 29, *Airport Layout Plan,* implements § 47107(a)(16) and provides that an ALP must designate non-aviation areas of the airport. The sponsor may not allow an alteration of the airport in a manner inconsistent with the ALP unless approved by the FAA. See Order 5190.6B, paragraph 7.18, and Advisory Circular 150/5070–6B, *Airport Master Plans,* Chapter 10.

Clearly identifying non-aeronautical facilities not only keeps aeronautical facilities available for aviation use, but also assures that the airport sponsor receives at least Fair Market Value (FMV) revenue from non-aviation uses of the airport. The AAIA requires that airport revenues be used for airport purposes, and that the airport maintain a fee structure that makes the airport as self-sustaining as possible. 49 U.S.C. 47107(a)(13)(A) and (b)(1). The FAA and the Department of Transportation Office of the Inspector General have interpreted these statutory provisions to require that non-aviation activities on an airport be charged a fair market rate for use of airport facilities rather than the aeronautical rate. See *FAA Policies and Procedures Concerning the Use of Airport Revenue,* (64 FR 7696, 7721, February 16, 1999) (FAA Revenue Use Policy).

If an airport tenant pays an aeronautical rate for a hangar and then uses the hangar for a non-aeronautical purpose, the tenant may be paying a below-market rate in violation of the sponsor's obligation for a self-sustaining rate structure and FAA's Revenue Use Policy. Confining non-aeronautical activity to designated non-aviation areas of the airport helps to ensure that the non-aeronautical use of airport property is monitored and allows the airport sponsor to clearly identify non-aeronautical fair market value lease rates, in order to meet their federal obligations. Identifying non-aeronautical uses and charging appropriate rates for these uses prevents the sponsor from subsidizing non-aviation activities with aviation revenues.

FAA Oversight

A sponsor's Grant Assurance obligations require that its aeronautical facilities be used or be available for use for aeronautical activities. If the presence of non-aeronautical items in a hangar does not interfere with these obligations, then the FAA will generally not consider the presence of those items to constitute a violation of the sponsor's obligations. When an airport has unused hangars and low aviation demand, a sponsor can request the FAA approval for interim non-aeronautical use of a hangars, until demand exists for those hangars for an aeronautical purpose. Aeronautical use must take priority and be accommodated over non-aeronautical use, even if the rental rate would be higher for the non-aeronautical use. The sponsor is required to charge a fair market commercial rental rate for any hangar rental or use for non-aeronautical purposes. (64 FR 7721).

The FAA conducts land use inspections at 18 selected airports each year, at least two in each of the nine FAA regions. *See* Order 5190.6B, paragraph 21.1. The inspection includes consideration of whether the airport sponsor is using designated aeronautical areas of the airport exclusively for aeronautical purposes, unless otherwise approved by the FAA. *See* Order 5190.6B, paragraph 21.6.

The Notice of Proposed Policy

In July 2014, the FAA issued a notice of proposed policy on use of hangars and related facilities at federally obligated airports, to provide a clear and standardized guide for airport sponsors and FAA compliance staff. (79 FR 42483, July 22, 2014). The FAA received more than 2,400 comments on the proposed policy statement, the majority from persons who have built or are in the process of building an amateur-built aircraft. The FAA also received comments from aircraft owners, tenants and owners of hangars, and airport operators. The Aircraft Owners and Pilots Association (AOPA) and the Experimental Aircraft Association (EAA) also provided comments on behalf of their membership. Most of the comments objected to some aspect the proposed policy statement. Comments objecting to the proposal tended to fall into two general categories:

- The FAA should not regulate the use of hangars at all, especially if the hangar is privately owned.
- While the FAA should have a policy limiting use of hangars on federally obligated airports to aviation uses, the proposed policy is too restrictive in defining what activities should be allowed.

Discussion of Comments and Final Policy

The following summary of comments reflects the major issues raised and does not restate each comment received. The FAA considered all comments received even if not specifically identified and responded to in this notice. The FAA discusses revisions to the policy based on comments received. In addition, the FAA will post frequently asked Questions and Answers regarding the Hangar Use Policy on *www.faa.gov/airport compliance.* These Questions and Answers will be periodically updated until FAA Order 5190.6B is revised to reflect the changes in this notice.

1. *Comment: Commenters stated that the FAA should defer to local government and leave all regulation of hangar use to the airport operator.*

Response: The FAA has a contract with the sponsor of an obligated airport, either through AIP grant agreements or a surplus property deed, to limit the use of airport property to certain aviation purposes. Each sponsor of an obligated airport has agreed to these terms. The FAA relies on each airport sponsor to comply with its obligations under this contract. To maintain a standardized national airport system and standardized practices in each of the FAA's nine regional offices, the agency issues guidance on its interpretation of the requirements of the AIP and surplus property agreements. It falls to the local airport sponsor to implement these requirements. The FAA allows airport sponsors some flexibility to adapt compliance to local conditions at each airport.

However, some airport sponsors have adopted hangar use practices that led to airport users to complain to the FAA. Some airport users have complained that sponsors are too restrictive, and fail to allow reasonable aviation-related uses of airport hangars. More commonly, aircraft owners have complained that hangar facilities are not available for aircraft storage because airport sponsors have allowed the use of hangars for purposes that are unrelated to aviation, such as operating a non-aviation business or storing multiple vehicles. By issuing the July 2014 notice, the FAA intended to resolve both kinds of complaints by providing guidance on appropriate management of hangar use. The agency continues to believe that FAA policy guidance is appropriate and necessary to preserve reasonable access to aeronautical facilities on federally obligated airports. However, the final policy has been revised in response to comments received on the proposal.

2. *Comment: Commenters, including AOPA, stated that the FAA lacks the authority to regulate the use of privately owned hangars.*

Response: The FAA has a statutory obligation to assure that facilities on aeronautically designated land at federally obligated airports are reasonably available for aviation use. Designated aeronautical land on a federally obligated airport is a necessary part of a national system of aviation facilities. Land designated for aeronautical use offers access to the local airfield taxiway and runway system. Land designated for aeronautical use is also subject to certain conditions, including FAA policies concerning rates and charges (including rental rates) which were designed to preserve access for aeronautical users and to support aeronautical uses. A person who leases aeronautical land on the airport to build a hangar accepts conditions that come with that land in return for the special benefits of the location. The fact that the tenant pays the sponsor for use of the hangar or the land does not affect the agreement between the FAA and the sponsor that the land be used for aeronautical purposes. (In fact, most hangar owners do not have fee ownership of the property; typically airport structures revert to ownership of the airport sponsor upon expiration of the lease term). An airport sponsor may choose to apply different rules to hangars owned by the sponsor than it does to privately constructed hangars, but the obligations of the sponsor Grant Assurances and therefore the basic policies on aeronautical use stated in this notice, will apply to both.

3. *Comment: Commenters believe that a policy applying the same rules to all kinds of aeronautical structures, and to privately owned hangars as well as sponsor-owned hangars, is too general. The policy should acknowledge the differences between categories of airport facilities.*

Response: A number of commenters thought that rules for use of privately constructed and owned hangars should be less restrictive than rules for hangars leased from the airport sponsor. The Leesburg Airport Commission commented that there are different kinds of structures on the airport, with variations in rental and ownership interests, and that the FAA's policy should reflect those differences. The FAA acknowledges that ownership or lease rights and the uses made of various aeronautical facilities at airports will vary. The agency expects that airport sponsors' agreements with tenants would reflect those differences. The form of property interest, be it a leasehold or ownership of a hangar, does not affect the obligations of the airport sponsor under the Grant Assurances. All facilities on designated aeronautical land on an obligated airport are subject to the requirement that the facilities be available for aeronautical use.

4. *Comment: Commenters agree that hangars should be used to store aircraft and not for non-aviation uses, but, they argue the proposed policy is too restrictive on the storage of non-aviation related items in a hangar along with an aircraft. A hangar with an aircraft in it still has a large amount of room for storage and other incidental uses, and that space can be used with no adverse effect on the use and storage of the aircraft.*

Response: In response to the comments, the final policy deletes the criteria of "incidental" or "de minimis" use and simply requires that non-aviation storage in a hangar not interfere with movement of aircraft in or out of the hangar, or impede access to other aeronautical contents of the hangar. The policy lists specific conditions that would be considered to interfere with aeronautical use. Stored non-aeronautical items would be considered to interfere with aviation use if they:

○ Impede the movement of the aircraft in and out of the hangar;

○ Displace the aeronautical contents of the hangar. (A vehicle parked at the hangar while the vehicle owner is using the aircraft will not be considered to displace the aircraft);

○ Impede access to aircraft or other aeronautical contents of the hangar;

○ Are used for the conduct of a non-aeronautical business or municipal agency function from the hangar (including storage of inventory); or

○ Are stored in violation of airport rules and regulations, lease provisions, building codes or local ordinances.

Note: Storage of equipment associated with an aeronautical activity (*e.g.*, skydiving, ballooning, gliding) would be considered an aeronautical use of a hangar.

5. *Comment: Commenters stated the policy should apply different rules to situations where there is no aviation demand for hangars, especially when hangars are vacant and producing no income for the sponsor.*

Response: At some airports, at some times, there will be more hangar capacity than needed to meet aeronautical demand, and as a result there will be vacant hangars. The FAA agrees that in such cases it is preferable to make use of the hangars to generate revenue for the airport, as long as the hangar capacity can be recovered on relatively short notice for aeronautical use when needed. *See* Order 5190.6B, paragraph 22.6. The final policy adopts a provision modeled on a leasing policy of the Los Angeles County Airport Commission, which allows month-to-month leases of vacant hangars for any purpose until a request for aeronautical use is received. The final policy requires that a sponsor request FAA approval before implementing a similar leasing plan:

- The airport sponsor may request FAA approval of a leasing plan for the lease of vacant hangars for non-aeronautical use on a month-to-month basis.
- The plan may be implemented only when there is no current aviation demand for the vacant hangars.
- Leases must require the non-aeronautical tenant to vacate the hangar on 30 days' notice, to allow aeronautical use when a request is received.
- Once the plan is approved, the sponsor may lease vacant hangars on a 30 days' notice without further FAA approval.

The agency believes this will allow airports to obtain some financial benefit from vacant hangars no, while allowing the hangars to be quickly returned to aeronautical use when needed. FAA pre-approval of a month-to-month leasing plan will minimize the burden on airport sponsors and FAA staff since it is consistent with existing interim use guidance.

6. *Comment: Commenter indicates that the terms "incidental use" and "insignificant amount of space" are too vague and restrictive.*

Response: The FAA has not used these terms in the final policy. Instead, the policy lists specific prohibited conditions that would be considered to interfere with aeronautical use of a hangar.

7. *Comment: Commenter states Glider operations require storage of items at the airport other than aircraft, such as tow vehicles and towing equipment. This should be an approved use of hangars.*

Response: Tow bars and glider tow equipment have been added to the list of examples of aeronautical equipment. Whether a vehicle is dedicated to use for glider towing is a particular fact that can be determined by the airport sponsor in each case. Otherwise the general rules for parking a vehicle in a hangar would apply.

8. *Comment: Commenter states it should be clear that it is acceptable to park a vehicle in the hangar while the aircraft is out of the hangar being used.*

Response: The final policy states that a vehicle parked in the hangar, while the vehicle owner is using the aircraft will not be considered to displace the aircraft, and therefore is not prohibited.

9. *Comment: Commenters, including Experimental Aircraft Association (EAA), stated that aviation museums and non-profit organizations that promote aviation should not be excluded from hangars.*

Response: Aviation museums and other non-profit aviation-related organizations may have access to airport property at less than fair market rent, under section VII.E of the FAA Policy and Procedures Concerning the Use of Airport Revenue. (64 FR 7710, February 16, 1999). However, there is no special reason for such activities to displace aircraft owners seeking hangar space for storage of operating aircraft, unless the activity itself involves use and storage of aircraft. Accordingly, aviation museums and non-profit organizations will continue to have the same access to vacant hangar space as other activities that do not actually require a hangar for aviation use, that is, when there is no aviation demand (aircraft storage) for those hangars and subject to the discretion of the airport operator.

10. *Comment: Commenters suggest that the policy should allow a 'grace period' for maintaining possession of an empty hangar for a reasonable time from the sale of an aircraft to the purchase or lease of a new aircraft to be stored in the hangar.*

Response: The FAA assumes that airport lease terms would include reasonable accommodation for this purpose and other reasons a hangar might be empty for some period of time, including the aircraft being in use or at another location for maintenance. The reasons for temporary hangar vacancy and appropriate "grace periods" for various events depend on local needs and lease policies, and the FAA has not included any special provision for grace periods in the final policy.

11. *Comment: Commenters believe that the policy should allow some leisure spaces in a hangar, such as a lounge or seating area and kitchen, in recognition of the time many aircraft owners spend at the airport, and the benefits of an airport community.*

Response: The final policy does not include any special provision for lounge areas or kitchens, either specifically permitting or prohibiting these areas. The policy requires only that any non-aviation related items in a hangar not interfere in any way with the primary use of the hangar for aircraft storage and movement. The airport sponsor is expected to have lease provisions and regulations in place to assure that items located in hangars do not interfere with this primary purpose.

12. *Comment: Commenters, including EAA, stated that all construction of an aircraft should be considered aeronautical for the purpose of hangar use, because building an aircraft is an inherently aeronautical activity. The policy should at least allow for use of a hangar at a much earlier stage of construction than final assembly.*

Response: The FAA has consistently held that the need for an airport hangar in manufacturing or building aircraft arises at the time the components of the aircraft are assembled into a completed aircraft. Prior to that stage, components can be assembled off-airport in smaller spaces. This determination has been applied to both commercial aircraft manufacturing as well as homebuilding of experimental aircraft.

A large majority of the more than 2,400 public comments received on the notice argued that aircraft construction at any stage is an aeronautical activity. The FAA recognizes that the construction of amateur-built aircraft differs from large-scale, commercial aircraft manufacturing. It may be more difficult for those constructing amateur-built or kit-built aircraft to find alternative space for construction or a means to ultimately transport completed large aircraft components to the airport for final assembly, and ultimately for access to taxiways for operation.

Commenters stated that in many cases an airport hangar may be the only viable location for amateur-built or kit-built aircraft construction. Also, as noted in the July 2014 notice, many airports have vacant hangars where a lease for construction of an aircraft, even for several years, would not prevent owners of operating aircraft from having access to hangar storage.

Accordingly, the FAA will consider the construction of amateur-built or kit-built aircraft as an aeronautical activity. Airport sponsors must provide reasonable access to this class of users, subject to local ordinances and building codes. Reasonable access applies to currently available facilities; there is no requirement for sponsors to construct special facilities or to upgrade existing facilities for aircraft construction use.

Airport sponsors are urged to consider the appropriate safety measures to accommodate aircraft construction. Airport sponsors leasing a vacant hangar for aircraft construction also are urged to incorporate progress benchmarks in the lease to ensure the construction project proceeds to completion in a reasonable time. The FAA's policy with respect to commercial aircraft manufacturing remains unchanged.

13. *Comment: Commenter suggests that the time that an inoperable aircraft can be stored in a hangar should be clarified, because repairs can sometimes involve periods of inactivity.*

Response: The term "operational aircraft" in the final policy does not necessarily mean an aircraft fueled and ready to fly. All operating aircraft experience downtime for maintenance and repair, and for other routine and exceptional reasons. The final policy does not include an arbitrary time period beyond which an aircraft is no longer considered operational. An airport operator should be able to determine whether a particular aircraft is likely to become operational in a reasonable time or not, and incorporate provisions in the hangar lease to provide for either possibility.

14. *Comment: Commenter suggests that the FAA should limit use of hangars on an obligated airport as proposed in the July 2014 notice. Airport sponsors frequently allow non-aeronautical use of hangars now, denying the availability of hangar space to aircraft owners.*

Response: Some commenters supported the relatively strict policies in the July 2014 notice, citing their experience with being denied access to hangars that were being used for non-aviation purposes. The FAA believes that the final policy adopted will allow hangar tenants greater flexibility than the proposed policy in the use of their hangars, but only to the extent that there is no impact on the primary purpose of the hangar. The intent of the final policy is to minimize the regulatory burden on hangar tenants and to simplify enforcement responsibilities for airport sponsors and the FAA, but only as is consistent with the statutory requirements for use of federally obligated airport property.

Final Policy

In accordance with the above, the FAA is adopting the following policy statement on use of hangars at federally obligated airports:

Use of Aeronautical Land and Facilities

Applicability

This policy applies to all aircraft storage areas or facilities on a federally obligated airport unless designated for non-aeronautical use on an approved Airport Layout Plan or otherwise approved for non-aviation use by the FAA. This policy generally refers to the use of hangars since they are the type of aeronautical facility most often involved in issues of non-aviation use, but the policy also applies to other structures on areas of an airport designated for aeronautical use. This policy applies to all users of aircraft hangars, including airport sponsors, municipalities, and other public entities, regardless of whether a user is an owner or lessee of the hangar.

I. General

The intent of this policy is to ensure that the federal investment in federally obligated airports is protected by making aeronautical facilities available to aeronautical users, and by ensuring that airport sponsors receive fair market value for use of airport property for non-aeronautical purposes. The policy implements several Grant Assurances, including Grant Assurance 5, *Preserving Rights and Powers;* Grant Assurance 22, *Economic Nondiscrimination;* Grant Assurance 24, *Fee and Rental Structure;* and Grant Assurance 25, *Airport Revenues.*

II. Standards for Aeronautical Use of Hangars

a. Hangars located on airport property must be used for an aeronautical purpose, or be available for use for an aeronautical purpose, unless otherwise approved by the FAA Office of Airports as described in Section III.

b. Aeronautical uses for hangars include:

1. Storage of active aircraft.
2. Final assembly of aircraft under construction.
3. Non-commercial construction of amateur-built or kit-built aircraft.
4. Maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of nonoperational aircraft.
5. Storage of aircraft handling equipment, *e.g.,* towbars, glider tow equipment, workbenches, and tools and materials used in the servicing, maintenance, repair or outfitting of aircraft.

c. Provided the hangar is used primarily for aeronautical purposes, an airport sponsor may permit non-aeronautical items to be stored in hangars provided the items do not interfere with the aeronautical use of the hangar.

d. While sponsors may adopt more restrictive rules for use of hangars, the FAA will generally not consider items to interfere with the aeronautical use of the hangar unless the items:

1. Impede the movement of the aircraft in and out of the hangar or impede access to aircraft or other aeronautical contents of the hangar.
2. Displace the aeronautical contents of the hangar. A vehicle parked at the hangar while the vehicle owner is using the aircraft will not be considered to displace the aircraft.
3. Impede access to aircraft or other aeronautical contents of the hangar.
4. Are used for the conduct of a non-aeronautical business or municipal agency function from the hangar (including storage of inventory).
5. Are stored in violation of airport rules and regulations, lease provisions, building codes or local ordinances.

e. Hangars may not be used as a residence, with a limited exception for sponsors providing an on-airport residence for a full-time airport manager, watchman, or airport operations staff for remotely located airports. The FAA differentiates between a typical pilot resting facility or aircrew quarters versus a hangar residence or hangar home. The former are designed to be used for overnight and/or resting periods for aircrew, and not as a permanent or even temporary residence. *See* FAA Order 5190.6B paragraph 20.5(b)

f. This policy applies regardless of whether the hangar occupant leases the hangar from the airport sponsor or developer, or the hangar occupant constructed the hangar at the occupant's own expense while holding a ground lease. When land designated for aeronautical use is made available for construction of hangars, the hangars built on the land are subject to the sponsor's obligations to use aeronautical facilities for aeronautical use.

III. Approval for Non-Aeronautical Use of Hangars

A sponsor will be considered to have FAA approval for non-aeronautical use of a hangar in each of the following cases:

a. FAA advance approval of an *interim use:* Where hangars are unoccupied and there is no current aviation demand for hangar space, the airport sponsor may request that FAA Office of Airports approve an interim use of a hangar for non-aeronautical purposes for a period of 3 to 5 years. The FAA will review the request in accordance with Order 5190.6B paragraph 22.6. Interim leases of unused hangars can generate revenue for the airport and prevent deterioration of facilities. Approved interim or concurrent revenue-production uses must not interfere with safe and efficient airport operations and sponsors should only agree to lease terms that allow the hangars to be recovered on a 30 days' notice for aeronautical purposes. In each of the above cases, the airport sponsor is required to charge non-aeronautical fair market rental fees for the non-aeronautical use of airport property, even on an interim basis. (64 FR 7721).

b. FAA approval of a *month-to-month leasing plan:* An airport sponsor may obtain advance written approval month-to-month leasing plan for non-aeronautical use of vacant facilities from the local FAA Office of Airports. When there is no current aviation demand for vacant hangars, the airport sponsor may request FAA approval of a leasing plan for the lease of vacant hangars for non-aeronautical use on a month-to-month basis. The plan must provide for leases that include an enforceable provision that the tenant will vacate the hangar on a 30-day notice. Once the plan is approved, the sponsor may lease vacant hangars on a 30-day notice basis without further FAA approval. If the airport sponsor receives a request for aeronautical use of the hangar and no other suitable hangar space is available, the sponsor will notify the month-to-month tenant that it must vacate.

A sponsor's request for approval of an interim use or a month-to-month leasing plan should include or provide for (1) an inventory of aeronautical and non-aeronautical land/uses, (2) information on vacancy rates; (3) the sponsor's procedures for accepting new requests for aeronautical use; and (4) assurance that facilities can be returned to aeronautical use when there is renewed aeronautical demand for hangar space. In each of the above cases, the airport sponsor is required to charge non-aeronautical fair market rental fees for the non-aeronautical use of airport property, even on an interim basis. (64 FR 7721).

c. *Other cases:* Advance written release by the FAA for all other non-aeronautical uses of designated aeronautical facilities. Any other non-aeronautical use of a designated aeronautical facility or parcel of airport land requires advance written approval from the FAA Office of Airports in accordance with Order 5190.6B chapter 22.

IV. Use of Hangars for Construction of an Aircraft

Non-commercial construction of amateur-built or kit-built aircraft is considered an aeronautical activity. As with any aeronautical activity, an airport sponsor may lease or approve the lease of hangar space for this activity without FAA approval. Airport sponsors are not required to construct special facilities or upgrade existing facilities for construction activities. Airport sponsors are urged to consider the appropriate safety measures to accommodate these users.

Airport sponsors also should consider incorporating construction progress targets in the lease to ensure that the hangar will be used for final assembly and storage of an operational aircraft within a reasonable term after project start.

V. No Right to Non-Aeronautical Use

In the context of enforcement of the Grant Assurances, this policy allows some incidental storage of non-aeronautical items in hangars that do not interfere with aeronautical use. However, the policy neither creates nor constitutes a right to store non-aeronautical items in hangars. Airport sponsors may restrict or prohibit storage of non-aeronautical items. Sponsors should consider factors such as emergency access, fire codes, security, insurance, and the impact of vehicular traffic on their surface areas when enacting rules regarding hangar storage. In some cases, permitting certain incidental non-aeronautical items in hangars could inhibit the sponsor's ability to meet obligations associated with Grant Assurance 19, *Operations and Maintenance.* To avoid claims of discrimination, sponsors should impose consistent rules for incidental storage in all similar facilities at the airport. Sponsors should ensure that taxiways and runways are not used for the vehicular transport of such items to or from the hangars.

VI. Sponsor Compliance Actions

a. It is expected that aeronautical facilities on an airport will be available and used for aeronautical purposes in the normal course of airport business, and that non-aeronautical uses will be the exception.

b. Sponsors should have a program to routinely monitor use of hangars and take measures to eliminate and prevent unapproved non-aeronautical use of hangars.

c. Sponsors should ensure that length of time on a waiting list of those in need of a hangar for aircraft storage is minimized.

d. Sponsors should also consider including a provision in airport leases, including aeronautical leases, to adjust rental rates to FMV for any non-incidental non-aeronautical use of the leased facilities. In other words, if a tenant uses a hangar for a non-aeronautical purpose in violation of this policy, the rental payments due to the sponsor would automatically increase to a FMV level.

e. FAA personnel conducting a land use or compliance inspection of an airport may request a copy of the sponsor's hangar use program and evidence that the sponsor has limited hangars to aeronautical use.

The FAA may disapprove an AIP grant for hangar construction if there are existing hangars at the airport being used for non-aeronautical purposes.

Issued in Washington, DC, on the 9th of June 2016.

Robin K. Hunt,

Acting Director, Office of Airport Compliance and Management Analysis.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 660, 801, and 809

[Docket No. FDA–2013–N–0125]

RIN 0910–AG74

Use of Symbols in Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing this final rule revising its medical device and certain biological product labeling regulations to explicitly allow for the optional inclusion of graphical representations of information, or symbols, in labeling (including labels) without adjacent explanatory text (referred to in this document as "stand-alone symbols") if certain requirements are met. The final rule also specifies that the use of symbols, accompanied by adjacent explanatory text continues to be permitted. FDA is also revising its prescription device labeling regulations to allow the use of the symbol statement "Rx only" or "℞ only" in the labeling for prescription devices.

DATES: This rule is effective September 13, 2016.

FOR FURTHER INFORMATION CONTACT: *For information concerning the final rule as it relates to devices regulated by the Center for Devices and Radiological Health (CDRH):* Antoinette (Tosia) Hazlett, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 5424, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–6119, email: *Tosia.Hazlett@fda.hhs.gov.*

For information concerning the final rule as it relates to devices regulated by the Center for Biologics Evaluation and Research: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

The final rule explicitly permits the use of symbols in medical device labeling without adjacent explanatory text if certain requirements are met. The medical device industry has requested the ability to use stand-alone symbols on domestic device labeling, consistent with their current use on devices manufactured for European and other foreign markets. The final rule seeks to harmonize the U.S. device labeling requirements for symbols with international regulatory requirements, such as the Medical Device Directive 93/42/EEC of the European Union (EU) (the European Medical Device Directive) and global adoption of International Electrotechnical Commission (IEC) standard IEC 60417 and International Organization for Standardization (ISO) standard ISO 7000–DB that govern the use of device symbols in numerous foreign markets.

Summary of the Major Provisions of the Regulatory Action in Question

FDA has generally interpreted existing regulations not to allow the use of symbols in medical device labeling, except with adjacent English-language explanatory text and/or on in vitro diagnostic (IVD) devices intended for professional use. Under the final rule, symbols established in a standard developed by a standards development organization (SDO) may be used in medical device labeling without adjacent explanatory text as long as: (1) The standard is recognized by FDA under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360d(c)) and the symbol is used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition, or alternatively, (2) if the symbol is not included in a standard recognized by FDA under section 514(c) or the symbol is in a standard recognized by FDA but is not used according to the specifications for use of the symbol set out in the FDA section 514(c) recognition, the device manufacturer otherwise determines that the symbol is likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c) of the FD&C Act (21 U.S.C. 352(c)) and uses the symbol according to the specifications for use of the symbol set forth in the SDO-developed standard. In addition, in either case, the symbol must be explained in a paper or electronic symbols glossary that is included in the labeling for the medical device. Furthermore, the labeling on or within the package containing the device must bear a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used. As with text used in device labeling, the use of symbols must also comply with other applicable labeling requirements in the FD&C Act, such as section 502(a) and section 502(f), and relevant regulations such as 21 CFR part 801. In addition, the final rule allows the use of the symbol statement "Rx only" or "℞ only" for labeling of prescription devices.

Costs and Benefits

Benefits represent the reduction in costs associated with designing and redesigning the labeling for medical devices that are currently marketed in the United States and the EU. We estimate these annual cost savings to roughly range between $7.9 million and $25.5 million at a 3 percent discount rate, and $7.7 million to $25 million at a 7 percent discount rate. Costs represent the one-time administrative costs to redesign labeling to incorporate a new or changed symbol, to the one-time costs to create a symbols glossary that is included in the labeling for the device, and the recurring costs to revise these glossaries, as necessary. Annualized over a 20-year period, we estimate these costs to range from $1.1 million to $3.2 million. Annualized over a 20-year period, we estimate total annualized net to range from $6.8 million to $22.3 million at a 3 percent discount rate, and from $6.6 million to $21.7 million at a 7 percent discount rate.

The use of stand-alone symbols in device labeling is optional under the final rule. Those device manufacturers who now use labels without symbols, or who use symbols with adjacent explanatory text, may continue to do so. Therefore, medical device manufacturers would use stand-alone symbols as allowed by the final rule only if they expect a positive net benefit (estimated benefits minus estimated costs). Hence, the final rule is expected to provide a net benefit to manufacturers who opt to use the stand-alone symbols as allowed under this final rule.

Summary of costs and benefits of the proposed rule	Total benefits annualized over 20 years (in millions)	Total costs annualized over 20 years (in millions)	Total net benefits annualized over 10 years (in millions)
Total	$7.7 to $25.5	$1.1 to $3.2	$6.6 to $22.3.

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I. Background

FDA published a proposed rule to revise certain medical device and biological product labeling regulations by explicitly allowing labeling to contain certain stand-alone symbols. The proposed rule would allow stand-alone use of symbols in device labeling if the symbol is established as part of a standard developed by a nationally or internationally recognized standards organization, is part of a standard recognized by FDA for use in the labeling for medical devices, and is explained in a symbols glossary that contemporaneously accompanies the medical device (78 FR 23508, April 19, 2013). The preamble to the proposed rule describes the background and the purpose of the rule as well as discusses that FDA recognition of the standard in which the symbol is contained would be under its authority in section 514(c) of the FD&C Act (21 U.S.C. 360d(c)). We refer readers to that preamble for information about the development of the proposed rule. The Agency requested public comments on the proposed rule, and the comment period closed on June 18, 2013.

As discussed further in section II.A, in this final rule FDA is making the following changes to the regulatory text of the final rule as compared to the proposed rule: (1) Deleting the term "standardized symbol" as that term was used in the proposed rule to refer only to symbols in FDA recognized standards and the scope of this final rule allows other alternatives; (2) providing that, in addition to symbols in a standard recognized by FDA under section 514(c) of the FD&C Act, the use of certain other SDO-established symbols is allowed; (3) clarifying that the symbols glossary must "be included in the labeling for the device," in lieu of using the words "contemporaneously accompanies" the device, providing that such glossary can be in paper or electronic form, and that the labeling on or within the package containing the device must bear a prominent and conspicuous statement identifying the location of the symbols glossary; (4) adding a definition of what we mean by the term "standards development organization (SDO)" for purposes of this final rule; and (5) revising the definition of "symbols glossary" to mean a compiled listing of: (a) Each SDO-established symbol used in the labeling for the device; (b) the title and the designation number of SDO-developed standard containing the symbol; (c) the title of the symbol and its reference number, if any, in the standard; and (d) the meaning or explanatory text for the symbol as provided in the FDA recognition, or if FDA has not recognized the standard or portion of the standard in which the symbol is located or the symbol is not used according to the specifications of the FDA section 514(c) recognition, the explanatory text as provided in the standard. In addition, in this final rule, we renumbered 21 CFR 660.2(c), 660.28, 660.35, 660.45, and 660.55 to improve the readability of these sections. This final rule also contains conforming amendments to 21 CFR 660.20(a) and 660.50(a) that update references made in these sections to certain of the renumbered provisions. As stated previously, in the proposed rule, the Agency proposed to limit use of stand-alone symbols in device labeling only to those symbols that an SDO established in a standard that FDA recognized under its authority in section 514(c) of the FD&C Act. The reason for FDA's reliance on its recognition process in the proposed rule as a criterion for allowable stand-alone symbols was that the process offered FDA the opportunity to determine that the symbol was likely to be read and understood by the ordinary user under customary conditions of use as required by section 502(c) of the FD&C Act. In part, based on comments discussed in this document, which raised issues regarding some aspects of the section 514(c) recognition process, the Agency further considered the matter and concluded that its recognition process under section 514(c) of the FD&C Act is not the only way to ensure that the appropriate section 502(c) determination is made. FDA determined that, as an alternative to its section 514(c) recognition, manufacturers could themselves determine whether an SDO-established symbol is likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c) of the FD&C Act. This would be consistent with what industry currently does when it uses text in labeling. We note, however, that FDA has the authority to make the definitive determination regarding compliance with the statute and can take enforcement action against violations, as warranted.

As provided in section 514(c)(1)(B) of the FD&C Act, a person can use a standard recognized by FDA to meet a statutory requirement and submit a declaration of conformity to FDA to certify that the device is in conformity with the standard. Section 514(c)(1)(B) of the FD&C Act further provides that a person may elect to use data, or information, other than data required by a standard recognized by FDA to meet any requirement regarding devices under the FD&C Act. Apart from such compliance with the requirements of section 502(c) of the FD&C Act by conforming to a standard recognized for that purpose under section 514(c), the manufacturer must determine itself that the labeling also meets the other requirements of the FD&C Act, as it is the responsibility of all persons labeling devices to assure statutory and regulatory compliance. The final rule acknowledges the device manufacturer's responsibility to comply with the requirements of section 502(c) of the FD&C Act as well, by permitting the use of a stand-alone symbol in labeling that the manufacturer has determined meets such requirements. Accordingly, this final rule provides that a stand-alone symbol is allowed to be used in device labeling if: (1) The symbol is established in a standard developed by an SDO; and (2) the standard is recognized by FDA under its authority under section 514(c) of the FD&C Act and the symbol is used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition, or alternatively, if the symbol is not included in a standard recognized by FDA under section 514(c) or the symbol is in a standard recognized by FDA but is not used according to the specifications for use of the symbol set out in the FDA section 514(c) recognition, the device manufacturer otherwise determines that the symbol is likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c) of the FD&C Act and uses the symbol according to the specifications for use of the symbol set forth in the SDO-developed standard. In addition, in either case, the symbol must be explained in a paper or electronic symbols glossary that is included in the labeling for the medical device. Furthermore, the labeling on or within the package containing the device must bear a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used. The additional option to use stand-alone symbols established in SDO-developed standards that FDA has not recognized, as permitted in the final rule, will result in more timely availability of stand-alone symbols for use in device labeling, more convenience for industry, and conserves limited Agency resources.

See section III (Compliance and Enforcement) for our discussion to help manufacturers determine, if the symbol is not included in a standard or part of a standard that FDA has recognized under section 514(c) of the FD&C Act or if the symbol is used outside the specifications of the FDA section 514(c) recognition, whether the stand-alone use of the symbol in device labeling is likely to be read and understood by the ordinary individual under customary conditions of purchase and use in accordance with section 502(c) of the FD&C Act. In section III, we also clarify that the other provisions of section 502 of the FD&C Act also apply to the use of stand-alone symbols, such as section 502(a) of the FD&C Act if use of the symbol in its labeling causes the labeling to be false or misleading and section 502(f) of the FD&C Act if use of the symbol in device labeling results in inadequate directions for use of the device. For clarity, in this final rule, we have set out the definition of an "SDO." For purposes of this rule, we define an SDO as an organization that is nationally or internationally recognized and that follows a process for standard development that is transparent (*i.e.,* open to public scrutiny), where the participation is balanced, where an appeals process is included, where the standard is not in conflict with any statute, regulation, or policy under which FDA operates, and where the standard is national or international in scope (see 76 FR 23508 at 23511). (See also FDA answer to Question 18 (What organizations can develop consensus standards for FDA recognition?) in the guidance document entitled "Frequently Asked Questions on Recognition of Consensus Standards; Guidance for Industry and FDA Staff" (September 2007), at. p. 7 (Ref. 1 and cited in the proposed rule (76 FR at 23508 at 23509)).

II. Comments on the Proposed Rule and FDA's Responses

We received submissions from 16 commenters, representing a cross-section of individuals, professional and trade associations, and device manufacturers. Almost all comments supported the objectives of the rule in whole or in part. The great majority of comments either suggested changes to specific elements of the proposed rule or requested clarification of matters discussed in the proposed rule.

A. Options for Using Stand-Alone Symbols

(Comment 1) Two comments raised the challenges and impracticality of FDA authorization of symbols via section 514(c) recognition of the standard in which the symbol is established. One of these comments expressed concern that, under the section 514(c) process, FDA recognition of certain symbols for certain devices within the standards will present challenges to industry. For instance, "if FDA does not recognize the newest revisions of the standards, discrepancies could require going back to define symbols in text on labels." Another commenter claimed that by limiting the recognition of symbols to certain devices, the Agency would be falling considerably short of harmonizing with other regulatory bodies, which is one major goal of this rulemaking. The comment went on to state that the European Medical Device Directive does not limit the use of recognized symbols to certain devices, *i.e.,* does not limit which symbols can be used nor does it limit the devices for which a symbol can be used as long as the symbol is explained elsewhere in the device labeling. The comment opined that requiring independent validation by FDA of the stand-alone symbols established in standards would be an unnecessary use of FDA resources.

(Response 1) The changes in the final rule discussed previously will address many, if not most, of these commenters' concerns. The final rule gives the manufacturer the option of using a symbol contained in an FDA recognized standard or determining for itself that the SDO-established symbol is likely to be read and understood by the customary purchasers and users of the device. Under the final rule, if an FDA recognized standard is only for a subset of symbols or a subset of devices, the manufacturer could submit its declaration of conformity with that standard, and to address any symbols, devices, or users not included in the FDA recognition, could determine for itself that use of those symbols, on those devices, or for those users meets the requirements of section 502(c) of the FD&C Act. This would be consistent with what industry currently does when it uses text in labeling. We note, however, that FDA has the authority to make the definitive determination regarding compliance with the statute and can take enforcement action against violations, as warranted. Furthermore, manufacturers always have the option to request FDA recognition of certain standards if the manufacturer does not want to determine for itself the section 502(c) compliance of the use of the stand-alone symbol in device labeling. See Guidance for Industry and FDA Staff entitled "Frequently Asked Questions on Recognition of Consensus Standards" (Ref. 1). Because manufacturers are not limited to use of stand-alone symbols which are part of an FDA-recognized standard, the final rule should not present the challenges raised by the commenters.

When the symbol is not contained in an FDA-recognized standard, this final rule requires that all stand-alone symbols used in device labeling be established in a standard developed by an SDO, as is the case for FDA recognition of standards under section 514(c) of the FD&C Act. Our definition of an SDO is intended to include the attributes that are required for voluntary consensus standards bodies, whose standards Federal Agencies are allowed to use for regulatory activities in lieu of a Government-developed standard. These attributes are openness, balance of interest, due process, an appeals process, and consensus (Refs. 2 and 3).

The symbols established in standards developed by SDOs, as defined in this final rule, will ordinarily have undergone the SDO's written procedures for approval or issuance and validation, and the final rule does not impose any additional requirements to revalidate that the symbol meets the requirements of section 502(c) of the FD&C Act if it is established in an FDA-recognized standard or has been appropriately validated by the SDO. See section II.D (FDA response to comments 10 and 11). As explained in the preamble to the proposed rule, FDA considers whether symbols have been validated through the standards development organization process when determining whether to recognize the symbols (see 76 FR 23508 at 23511). We also note that, contrary to the commenters' assertion regarding independent FDA validation of stand-alone symbols in a standard, FDA, as part of its section 514(c) recognition process, does not independently validate the symbols. For symbols in standards recognized by FDA under its authority in section 514(c) of the FD&C Act, FDA will have determined that the standard containing the symbol was developed by an SDO and that the SDO used its validation procedures in establishing the standard.

Under the final rule, a stand-alone symbol that is allowed to be used in device labeling is a symbol that: (1) Is established in a standard developed by an SDO; and (2) is contained in a standard that FDA recognizes under section 514(c) of the FD&C Act and is used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition, or alternatively, if the symbol is not contained in a standard recognized by FDA under section 514(c) of the FD&C Act or the symbol is contained in a standard recognized by FDA but is not used according to the specifications for use of the symbol set out in the FDA section 514(c) recognition, is determined by the manufacturer to be likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c) of the FD&C Act and is used according to the specifications for use of such symbol as set forth in such standard. In addition, in either case, the stand-alone symbol must be explained in a paper or electronic symbols glossary that is included in the labeling for the device. Furthermore, the labeling on or within the package containing the device must bear a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used. In device labeling, symbols that do not satisfy these criteria must be accompanied by adjacent explanatory text.

(Comment 2) Four comments requested that FDA authorize stand-alone use of all the symbols contained in ISO 15223–1:2012. One of these comments also encouraged the Agency to consider authorizing stand-alone use of the symbols in international standards ISO 7000, ISO 7010, and IEC 60417; another asked us to clarify that authorized stand-alone use will include the symbols in ANSI/AAMI ES60601–1:2005 and supersede IEC 60601–1. A separate comment recommended authorizing stand-alone use of the symbols in "ISO standard BS EN 980."

(Response 2) As explained earlier in the Background section and section II.A (FDA response to Comment 1), this final rule provides additional flexibility by permitting the stand-alone use, in device labeling, of symbols that are part of a standard recognized by FDA under section 514(c) of the FD&C Act, as specified in the proposed rule, or, alternatively, a manufacturer can use an SDO-established symbol not included in a standard recognized by FDA or a symbol in a standard recognized by FDA but not used in accordance with the specifications for use of the symbol set forth in FDA's section 514(c) recognition, if it otherwise determines that the symbol is likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c) of the FD&C Act. Because FDA recognition of the underlying standard is not the only option for manufacturers, they are free to choose to select the additional option provided by the final rule with regard to using symbols established in the standards referenced in the comments. (See also section III regarding compliance and enforcement).

(Comment 3) Three comments stated that stand-alone symbols, once recognized through the section 514(c) process, should be allowed for all medical devices, rather than limited to use on any subset of devices. All three commenters believed that the Agency's actions in authorizing stand-alone symbols for IVD devices in the guidance document entitled "Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use" (November 2004) (the "IVD Symbols Guidance") at pp. 7–8 (Ref. 4), and in proposing for this rule that standardized symbols should be limited to a subset of devices, are confusing when limited use of stand-alone symbols is authorized based on device category and user groups.

(Response 3) FDA plans to continue to recognize symbols under its authority in section 514(c) of the FD&C Act for subsets of devices and/or subsets of users, as appropriate. Because the final rule does not limit the use of symbols to those in FDA-recognized standards, manufacturers have the option to use stand-alone symbols in the labeling for any medical device, as long as the symbol is established in a standard developed by an SDO and explained in a symbols glossary as provided in the standard and the manufacturer determines that the stand-alone symbol on its particular device otherwise satisfies section 502(c) of the FD&C Act. Because the Agency is providing additional flexibility with regard to allowable stand-alone symbols, manufacturers are not limited as a result of FDA's recognition of a standard for only a subset of symbols, devices, or users. We note that use of stand-alone symbols beyond the specifications for use set out in FDA's recognition of the standard will require manufacturers to establish section 502(c) compliance for those symbols, devices, or users not included in FDA's recognition. If the manufacturer determines that the stand-alone symbol on its particular device otherwise satisfies section 502(c) of the FD&C Act, the manufacturer can use the stand-alone symbol in device labeling established in the standard only within the specifications for use of the symbol set out in the SDO-developed standard. Otherwise, a symbol used outside of the specifications for use set forth in the SDO-developed standard must be accompanied by adjacent explanatory text. See § 801.15(c)(1)(i)(C), as revised, in this final rule.

CDRH encourages stakeholders to recommend appropriate standards for FDA recognition under section 514(c) of the FD&C Act by following the instructions located at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123739.htm.*

B. Matters Relating to the Extent to Which Symbols Can Be Used

1. Proprietary Symbols

(Comment 4) One of the comments stated that medical device manufacturers should be permitted to use proprietary symbols as long as the meaning of the proprietary symbol is described in documentation supplied with the device. The comment points out that the European Medical Device Directive allows the use of a symbol not developed as part of a standard as long as the symbol is defined in the labeling for the product.

(Response 4) We believe the commenter is referring to the provision in the EU's 1993 Medical Device Directive which states: "Any symbol or identification colours used must conform to the harmonized standards. In areas for which no standards exist, the symbols and colours must be described in the documentation supplied with the device." That is, the comment refers to a proprietary symbol that is not contained in a standard. Under the proposed rule and this final rule, for the use of a stand-alone symbol in device labeling to be allowed, the symbol must be established as part of a standard. In the preamble to the proposed rule, the Agency stated that it does not intend to recognize proprietary symbols (78 FR 23508 at 23511). This referred to proprietary symbols contained in a standard.

The Agency believes that proprietary symbols, whose use is subject to the symbol owner's exclusive rights and not freely available to the public, should be outside the SDO standards development process called for in the proposed rule and finalized in this rule. See the earlier discussion of SDO factors found in the National Technology Transfer and Advancement Act of 1995 (Ref. 2) and Circular A–119 (Ref. 3) to be considered when a Federal Agency uses standards developed outside the Government (Section I. (Background)).

Circular A–119 also provides that the Government use for regulatory purposes of a standard developed by non-Government body must include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free, or reasonable royalty basis to all interested parties (63 FR 8553 at 8554). The term "proprietary symbol," and the comment, begs the question of whether such symbol would be freely available to the public and whether the symbol's owner has retained its exclusive rights. Because this final rule is limited to symbols established in standards, it does not allow proprietary symbols for use as stand-alone symbols. We note, however, that the rule allows use of a proprietary symbol accompanied by explanatory text adjacent to the symbol.

2. Pictograms

(Comment 5) Two comments asked us to clarify that product graphics or pictograms included in labeling, for example graphics showing the steps for using a device, are outside the scope of the proposed rule. One of the comments went further to assert that pictograms do not require accompanying English text to explain their meaning.

(Response 5) We agree that product graphics or pictograms included in labeling, for example graphics showing the steps for using a device, are outside this rulemaking. Symbols are not allowed for stand-alone use in this final rule unless they are established in a standard developed by an SDO and such graphics normally are not so established. Product graphics are typically unique to the individual product. They are not broadly applicable or used across a wide range of devices, and are unlikely to be established in an SDO-developed standard. Because the final rule is limited to symbols established in a standard, such product graphics are outside the scope of this final rule.

The Agency has interpreted its regulations generally to allow graphics, pictures, or symbols to meet the labeling requirements of this regulation except where it specifies particular labeling language (78 FR 23508 at 23509). Having said that, if a stand-alone graphical representation communicates required labeling information, such as directions for use required by § 801.5, the product graphic alone is unlikely to satisfy regulatory requirements, even when used under this final rule with accompanying adjacent English text, and further labeling may be needed in addition to what this final rule requires to explain the meaning of the symbol (see amended §§ 660.2(c), 660.28, 660.35, 660.45, 660.55, 801.15(c)(1) and 809.10.

3. Symbols Used on Non-Device Medical Products

(Comment 6) One comment argued that if a symbol is authorized for stand-alone use in device labeling, then that symbol should be authorized for all medical products, including for drugs or combination products. According to the comment, "a standard FDA recognizes" means a standard adopted "for all Centers" and for all FDA-regulated products, not just devices. While acknowledging the "procedural issues" associated with extending the scope of the final rule to non-device medical products, the commenter recommended flexibility "through enforcement discretion" until the regulations for drugs and non-device biological products can be updated to conform to the use of stand-alone symbols on medical devices.

(Response 6) The proposed rule would have authorized the stand-alone use of symbols explained in a symbols glossary included in the device labeling and contained in a standard recognized under section 514(c) of the FD&C Act, a provision applicable to medical devices only. The final rule also provides for the use in device labeling of stand-alone symbols if they are established in standards developed by an SDO, the manufacturer determines that the symbols are likely to be read and understood by the ordinary individual under customary conditions of use and purchase and the symbols are explained in a paper or electronic symbols glossary that is included in the labeling for the device. Because this rulemaking revises only the device and certain biological product labeling regulations, labeling for other FDA-regulated products is outside the scope of this rulemaking. Manufacturers considering the use of stand-alone symbols in labeling for other-FDA regulated products should contact the appropriate Center for the product regarding the permissibility of such use.

4. Combination Products

(Comment 7) One comment asked us to clarify how the rule applies to combination products, *i.e.,* to medical products containing not only a device constituent but also a drug or biological product, for example, a drug/device combination.

(Response 7) Stand-alone symbols may be used in accordance with the final rule in the labeling applicable to a combination product as a whole if the primary mode of action (PMOA) for the product (see 21 CFR 3.2(k) and (m)) is that of a device. Stand-alone symbols may also be used in any separate labeling for the device constituent part of a combination product, regardless of the PMOA for the combination product (*e.g.,* any separate labeling for the device constituent part of a convenience kit or other copackaged combination product, see § 3.2(e)(2)).

The appropriate use of stand-alone symbols in any other labeling associated with combination products is beyond the scope of this rulemaking. Manufacturers considering the use of stand-alone symbols in such other labeling for combination products should contact the lead Center for the product regarding the permissibility of the proposed use.

C. Labeling Information Not Required by or Under the Authority of the FD&C Act

(Comment 8) When adequate directions for use are known to the ordinary individual, some devices may be exempt from adequate directions for use (§ 801.116; see section 502(f)(1) of the FD&C Act). Some prescription devices are likewise not required to bear adequate directions for use if practitioners licensed by law to use the device are commonly aware of the directions, hazards, warnings, and other information necessary to use the device safely and for the purpose for which it is intended (§ 801.109(c)).

Three comments suggested that manufacturers marketing devices that are exempt from adequate directions for use under § 801.116 or § 801.109(c) would needlessly be burdened under this final rule to create a symbols glossary to explain symbols that they are using voluntarily to display information that is not required "by or under" the FD&C Act.

(Response 8) The final rule requires a symbols glossary when a stand-alone symbol is used to provide labeling information required by or under the authority of the FD&C Act. (§ 801.15(c)(1)). The commenters' understanding of FDA authority "by or under" the FD&C Act is too narrowly focused on the regulations concerning adequate directions for use under section 502(f)(1).

A device that is exempt from section 502(f)(1) of the FD&C Act under § 801.116 or § 801.109(c) may still be required to include certain information in its labeling for other purposes in order to provide a reasonable assurance of the safety and effectiveness of the device. For example, a prescription device that is exempt from section 502(f)(1) of the FD&C Act must still include, under § 801.109(c), indications, effects, routes, methods, and frequency and duration of administration, and any relevant hazards, contraindications, side effects, and precautions in its labeling.

Whether or not a medical device is exempt by regulation from section 502(f)(1) of the FD&C Act, the device is still subject to the other misbranding provisions of section 502. Consequently, we disagree that directions-for-use symbols voluntarily used on devices exempt from adequate directions for use under § 801.116 or § 801.109(c) should be categorically exempt from the symbols glossary requirement and the final rule.

(Comment 9) In discussing the symbols glossary requirement, the preamble to the proposed rule stated therefore, any stand-alone symbol on the labeling for a device that conveys directions for use would be subject to the symbols glossary requirements (78 FR 23508 at 23511). One commenter interpreted this statement as limiting the symbols glossary requirement to symbols for directions-for-use information only. The commenter requested clarification that, under the final rule, use of a symbol that does *not* convey directions for use, such as "the manufacturing site symbol, lot symbol, etc.," should therefore not trigger the symbols glossary requirement.

(Response 9) The preamble statement quoted in the comment refers to directions-for-use symbols as an example, and not by way of limitation; but we agree that clarification is appropriate.

FDA device labeling regulations specifically require information other than just directions for use, including the examples mentioned in the comment. For example, under § 801.1(a), the device label must identify the name and address of the manufacturer, packer, or distributor of the device. If an FDA-allowed stand-alone symbol is used, for example, in place of the wording "manufacturer:" or "manufacturing site:" followed by a name and address, the final rule requires that a symbols glossary must be included in the labeling for the device to explain the meaning of the symbol to the device's user. There are many FDA regulations that require device labeling information; and the final rule, including the symbols glossary requirement, applies to any device using a stand-alone symbol to provide such information.

D. Validation of Stand-Alone Symbols Contained in Standards Not Recognized by FDA or Recognized for Only a Subset of Symbols, Devices, or Users

(Comment 10) One comment asked the Agency to ensure that each stand-alone symbol authorized under this rule can be relied upon and be used by device manufacturers, without separate validation by the manufacturer for its use on a specific device. Another comment asked us to clarify that FDA would not unnecessarily use its resources to revalidate symbols established in an SDO-developed standard.

(Response 10) The symbols established in standards developed by SDOs will ordinarily have undergone the SDO's written procedures for approval or issuance and validation (78 FR 23508 at 23511). In the validation process, studies can demonstrate end-user comprehension of the stand-alone symbol in the device labeling context; and validation data specifically applicable to medical devices may be submitted to the SDO for its review (78 FR 23508 at 23510, see for example AAMI/ANSI/ISO 15223–2:2010 (Part 2), *Symbol Development, Selection and Validation*).

The final rule does not impose any additional requirements on device manufacturers to revalidate that such symbols meet the requirements of section 502(c) of the FD&C Act if the symbol is established in an FDA-recognized standard or has been appropriately validated by the SDO. FDA does not intend to invite requests for it to validate or to revalidate a symbol allowed under the rule, *i.e.*, a stand-alone symbol established in an SDO-developed standard and explained in the device labeling. However, we will consider information as appropriate, including post-market surveillance data indicating that a symbol used on a particular device is not understood by device users (section 502(c) of the FD&C Act), or that it causes the labeling to be false or misleading (section 502(a)), results in inadequate directions for use of the device (section 502(f)), or otherwise causes the device labeling to violate the misbranding provisions of section 502.

(Comment 11) One comment questioned why, if the validation process includes consumer testing, there was no analysis of this cost burden.

(Response 11) The final rule does not impose any new requirements for public participation in the standards development processes of SDOs or for the establishment of symbols in SDO-developed standards. The final rule does not affect the paperwork burden or cost associated with the standards-development process establishing a symbol allowed by the final rule, and therefore, no cost estimate or economic analysis of the process is required.

The final rule establishes certain procedures and conditions for device manufacturers to use a symbol as a stand-alone symbol on medical device labeling, including specifically, that the symbol must be explained in a symbols glossary that is included in the labeling for the device. The proposed and final rules do analyze the paperwork burden and economic cost of these procedures and conditions, including the required symbols glossary.

The burden on persons seeking SDO development of standards establishing symbols, including the validation of those symbols in the standard, is a matter already considered under existing standards-development norms and is otherwise in the control of the relevant SDO. The final rule does not require the interested party to revalidate that the stand-alone symbol meets the requirements of section 502(c) of the FD&C Act if the symbol is established in an FDA-recognized standard or has been appropriately validated by the SDO. Any validation needed in order to comply with the requirements of section 502(c) of the FD&C Act is under the requirements of that statute, and is not being imposed by this final rule. Accordingly, there is no validation process required by the final rule, and no cost estimate or economic analysis is called for in the rule.

E. Symbols Glossary Requirement

(Comment 12) Four comments state that, in the case of stand-alone symbols established in an SDO-developed standard, a symbols glossary "contemporaneously accompanying" the device is unnecessary. Three of these comments specifically refer to the symbols contained in ISO 15223–1 and contend that the symbols glossary requirement does not harmonize with the European Medical Device Directive or with ISO 15233 because neither one requires an accompanying symbols glossary. Alternatively, one comment suggested that the final rule should establish a sunset limitation for the symbols glossary requirement, so that, for example, the glossary rule would expire 2 years after the publication of the final rule.

(Response 12) FDA disagrees with the comments that its symbols glossary requirement is not necessary and does not harmonize with the European Medical Directive or with ISO 15233. The European Medical Device Directive states that "[i]n areas for which no standards exist, the symbols and colours must be described in the documentation supplied with the device." The Directive does not otherwise preclude requiring documentation with such symbols. Many of the symbols contained in ISO 15223–1 explicitly restrict their use as follows: "In Europe, this symbol shall be explained in the information supplied by the manufacturer." FDA is aware of many device manuals containing a symbols glossary that would comply with this final rule, and has in the past considered this a good practice. Furthermore, the IVD Symbols Guidance (Ref. 4) recommends that a glossary of terms accompany each IVD to define all the symbols used on that device's label and/or labeling (at pp. 7–8). Following the effective date of this final rule, FDA intends to withdraw the IVD Symbols Guidance.

Concerning the comment recommending a sunset limitation on the symbols glossary requirement, the Agency disagrees. The symbols glossary is intended to allow users to become familiar with the meaning of the symbols and also acts as a reference for users to look up any definitions they may not recall. In these respects, the symbols glossary helps to satisfy, although it does not satisfy on its own, the requirements of section 502(c) of the FD&C Act by making it more likely that users under customary conditions of purchase and use have access to necessary reference materials to help them understand the symbols. Accordingly, we do not believe that a sunset limitation on the symbols glossary requirement is appropriate.

(Comment 13) Four comments requested FDA to clarify the meaning of the term "contemporaneously accompanies the device" in the symbols glossary requirement of the rule, in particular whether the term includes "all varieties of written or electronic materials that are connected to a manufacturer's marketing and sale of a product, even when the materials are not physically with the medical device." Two of these commenters believe that, in the case of prescription devices, the rule should permit electronic display of the symbols glossary under section 502(f) of the FD&C Act and that such electronic labeling should be treated as accompanying the device for purposes of the rule. One comment urged that a reference in the medical device labeling to an online FDA glossary should satisfy the glossary requirement. Another stated that electronic labeling is an accepted practice for IVDs in the EU.

(Response 13) In the proposed rule, one of the requirements for use of stand-alone symbols was that such symbols be explained in a symbols glossary that contemporaneously accompanies the device. FDA understands that the term "contemporaneously accompanies" in the proposed rule may have prompted confusion, and we are revising the codified language of the final rule to clarify that a stand-alone symbol must be explained in a paper or electronic symbols glossary that is "included in the labeling for the device." We agree that flexibility is possible and appropriate to satisfy the symbols glossary requirement. The new wording permits flexibility in the form of the symbols glossary, as long as the glossary is included in the labeling for the device.

Furthermore, this final rule allows device manufacturers to provide the symbols glossary by electronic means. We have changed the codified to read "the symbol . . . is explained in a paper or electronic symbols glossary that is included in the labeling for the device." (See amended §§ 660.2(c), 660.28, 660.35, 660.45, 660.55, and 801.15(c)(1), and new § 809.10(g).) That is, the symbols glossary can be provided by electronic means so long as the glossary is included in the labeling for the device. This change also takes into account the provisions of section 502(f) of the FD&C Act which provides that required labeling for certain prescription devices and certain IVD devices may be made available solely by electronic means. (See section 502(f) ("by electronic means")).

In the proposed rule, we inadvertently did not specify that the labeling of the device must direct the purchaser and user as to the location of the symbols glossary in the labeling for the device. Without directions as to the location of the symbols glossary in the labeling, the purpose of the symbols glossary would not be served. Therefore, this final rule provides that the symbol is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary. For example, the statement could read "The symbols glossary is provided [specify, *e.g.,* in Section X of the package insert, as a separate insert within the package, on the side panel of the package, electronically at (insert URL address to symbols glossary on manufacturer's Web site)]." The statement must be in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used.

In the proposed rule, the term "symbols glossary" was defined in the codified as "a compiled listing of each symbol used in the labeling of the device and of the meaning of or explanatory text for the symbol." We are revising the codified language in the final rule to define "symbols glossary" as "compiled listing of: (1) Each SDO-established symbol used in the labeling for the medical device; (2) the title and designation number of the SDO-developed standard containing the symbol; (3) the title of the symbol and its reference number, if any, in the standard; and (4) the meaning or explanatory text for the symbol as provided in the FDA recognition, or if FDA has not recognized the standard or portion of the standard in which the symbol is located or the symbol is not used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition, the explanatory text as provided in the standard (see amended §§ 660.2(c), 660.28, 660.35, 660.45, 660.55, and 801.15(c) and new § 809.10(g)). In finalizing the rule, we revised the "symbols glossary" definition to help accurately identify the SDO-developed standard containing the symbol and the symbol in the standard.

(Comment 14) One comment argued that a single copy of the glossary should satisfy the rule when the same devices are shipped together in a multipack. Another comment argued that replacement parts or disposable components servicing the device with stand-alone symbols in their labeling should be exempt from the glossary rule because the customer would already have received the glossary information with the original purchase of the device.

(Response 14) In both of these situations, the premise is that there is a stand-alone symbol that appears in the labeling for the individual device unit or the replacing component.

Typically, a replacement part for a medical device or disposable component is used later in time than the replaced component. The glossary delivered to the user with the original equipment might no longer be available to explain the meaning of the stand-alone symbol on the labeling for a replacement part. "Any component, part, or accessory" of a device, if its intended use is to service the device, is itself a device (section 201(h) of the FD&C Act (21 U.S.C. 321(h))). Under the final rule, the symbols glossary requirement therefore applies separately to replacement or disposable components when the labeling for the replacing component bears a stand-alone symbol because the symbols glossary must be included in the labeling for the device.

Additionally, the individual units of a multipack shipment, like replacement components, are likely to be used later such that the glossary delivered to the user of a multipack shipment might no longer be retained and available to explain the meaning of the stand-alone symbol on the labeling for the remaining individual units after the multipack is broken and the first unit or units are used. Under the final rule, the symbols glossary requirement therefore applies to the individual devices of a multipack shipment when the labeling for the individual units bears a stand-alone symbol because the symbols glossary must be included in the labeling for the device.

To reduce the burden of the glossary requirement for individual devices of a multipack shipment, manufacturers should consider the final rule's provision for use of an electronic symbols glossary. Such electronic glossary, however, must be included in the labeling for the device. In such situations, FDA requires that the labeling for the device must prominently and conspicuously include the URL address for a Web site that displays the symbols glossary on the manufacturer's Web site explaining the meaning of the stand-alone symbols used on that device's labeling.

F. Implementation of the Final Rule

(Comment 15) One comment asked FDA to clarify how much time manufacturers will have to convert existing symbols in labeling to stand-alone symbols.

(Response 15) In the final rule, there is no required conversion to stand-alone symbols. The final rule does not mandate the use of stand-alone symbols. The use of stand-alone symbols is an alternative to labeling without symbols and to the currently-allowed use of symbols with adjacent explanatory text. Effective beginning on September 13, 2016 (see section VIII), the final rule expressly provides for the use of symbols accompanied by adjacent explanatory text in the device labeling (amended §§ 660.2(c), 660.28, 660.35, 660.45, 660.55, and 801.15(c)(1) and new § 809.10(g)) and the use of stand-alone symbols that meet the requirements of the rule.

(Comment 16) One comment asked FDA to clarify whether manufacturers need to file a new 510(k) notification under 21 CFR part 807, subpart E or a Premarket Approval (PMA) supplement under 21 CFR part 814 when they replace symbols currently used with adjacent English text with stand-alone symbols and a symbols glossary in the device labeling.

(Response 16) In most cases, manufacturers who wish to update their device or product labeling only by substituting text with one or more stand-alone symbols allowed under the rule, or to remove explanatory text adjacent to such symbols (without making any changes to the meaning of the labeling), do not need to submit a new premarket submission prior to making that change. In some cases FDA may require, through regulation or order, through a special controls guideline, or on a case-by-case basis in reviewing premarket submissions, specific language in device labeling, or may require or prohibit use of symbols in a specific labeling context. For example, devices subject to a boxed-warning labeling requirement must strictly adhere to the exact language of the applicable regulation, and any use of symbols in the warning should be reviewed and specifically allowed by FDA in advance of such use.

For medical devices with an approved PMA, manufacturers may generally replace required information in existing labeling with equivalent stand-alone symbols that are allowed under the rule without the need to submit a PMA supplement. PMA holders that implement this type of change should notify the Agency of the change in the next annual report to the PMA, in accordance with § 814.84. As with 510(k)-cleared devices, however, in some cases FDA may require, through regulation or order, or on a case-by-case basis during premarket review, specific language in device labeling, or may require or prohibit use of symbols in a specific labeling context.

Similarly, applicable biologics license holders that replace required information with stand-alone symbols that are allowed under the rule on the labeling for licensed products also regulated as devices should notify the Agency of the change in the next annual report to the manufacturer's Biologics License Application (BLA), in accordance with 21 CFR 601.12(f)(3)(i)(A); and the Agency will consider the change to be an editorial or similar minor change.

Manufacturers may substitute stand-alone symbols that are allowed under the rule for equivalent text on existing labels and labeling for medical devices that received premarket notification (510(k)) clearance without submitting a new 510(k) notification. For information on other labeling changes that might require submission of a new 510(k) notification, please see § 807.81(a)(3).

(Comment 17) Three comments urged FDA to maintain close cooperation and communication with industry in order to implement timely updates of the list of symbols permitted for stand-alone use through its standards-recognition process and to keep up with the revision of current international standards.

(Response 17) Under this final rule, any stand-alone symbol established in an SDO-developed standard and used in accordance with the specifications of the standard is allowed, regardless of whether or not FDA recognizes the standard or the part of the standard containing the symbol, under section 514(c) of the FD&C Act. Under the final rule, symbols established in a standard developed by an SDO may be used in medical device labeling without adjacent explanatory text as long as: (1) The standard is recognized by FDA under its authority under section 514(c) of the FD&C Act and the symbol is used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition, *or alternatively,* (2) if the symbol is not included in a standard recognized by FDA under section 514(c) of the FD&C Act or the symbol is in a standard recognized by FDA but is not used according to the specifications for use of the symbol set out in the FDA section 514(c) recognition, the device manufacturer otherwise determines that the symbol is likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c) of the FD&C Act and uses the symbol according to the specifications for use of the symbol set forth in the SDO-developed standard. In addition, in either case, the symbol must be explained in a paper or electronic symbols glossary that is included in the labeling for the device. Furthermore, the labeling on or within the package containing the device must bear a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used. Although FDA will continue to participate with SDOs in the standards development process and some of those standards may involve symbols in device labeling, the final rule will not require the close industry coordination and communication with FDA in order for firms to comply with the rule because of its additional flexibility.

(Comment 18) One comment recommended that when the Agency does not recognize all the symbols established in a standard for stand-alone use, it should clearly state why any rejected symbol is not included in order for interested parties to get "insights needed to validate the symbols."

(Response 18) Under the final rule, the fact that FDA does not recognize all the symbols established in a standard does not preclude a manufacturer from determining that the stand-alone use of the symbol is likely to be read and understood by the ordinary individual under customary conditions of use and purchase. Therefore, the Agency will not provide explanations of why it does not include certain symbols in a standard in its recognition under section 514(c) of the FD&C Act as requested by the commenter.

G. Symbol Statement "Rx Only" or "℞ Only"

(Comment 19) Two comments related to the provision of the rule authorizing use of the symbol statement "Rx Only." One comment asked whether validation will be required in order to use "Rx Only" on a prescription device. The second comment asked whether FDA will be issuing guidance to support use of the symbol statement "Rx Only."

(Response 19) This final rule does not require validation by the device manufacturer in order for it to use the symbol statement "Rx Only" on its prescription device. The symbol statement "Rx Only" has a separate statutory and regulatory history unrelated to the use of standards as allowed in this final rule.

As explained in the preamble to the proposed rule, section 126(a) of the FDA Modernization Act of 1997 (FDAMA) (Pub. L. 105–115), amending section 503(b)(4) of the FD&C Act (21 U.S.C. 353(b)(4)), allows use of this symbol statement on the labels of drug products in place of a full prescription use statement that indicates that the drug must be dispensed with a clinician's prescription. FDAMA did not explicitly make the permitted use of "Rx Only" applicable to medical devices; however, the Agency published the guidance document entitled "Alternative to Certain Prescription Device Labeling Requirements," January 2000 (the Rx Only Statement Guidance) (Ref. 5) stating that FDA would exercise enforcement discretion for the use of "Rx Only" on prescription device labels. FDA's reason for issuing that guidance document was a desire to minimize the burden of creating device labels and to make it flexible consistent with the statutorily permitted use of the "Rx Only" symbol statement for prescription drug products. In this rule, FDA is expressly allowing for use of "Rx Only" for the labels of prescription devices to give device manufacturers the option to use "Rx Only" in lieu of the longer statement currently in the regulations. FDA has included this change in this rulemaking given the changes involving symbols that the final rule is making to other sections of FDA's labeling regulations.

Because the statutory authority for using the symbol statement "Rx Only" for drug products, and our purpose and intent in this final rule extending it to prescription devices, are clear and satisfy the misbranding requirements of section 502 of the FD&C Act pertaining to the symbol statement "Rx Only," the Agency does not intend to issue a new guidance document regarding the use of "Rx Only." We only restate in this document what we said in the preamble to the proposed rule about using the symbol statement "Rx Only." It is important to note that the word "only" must immediately follow the symbol "Rx." However, the symbol statement "Rx only" does not necessarily need to be bracketed in quotation marks, and the word "only" may appear in upper or lower case letters, for example, Rx only, Rx Only, or Rx ONLY. As in the case of labels for prescription drugs, the new label statement for prescription medical devices may be printed as either "Rx only" or "℞ only." (See 67 FR 4904, February 1, 2002.) The symbol statement "Rx only" in its entirety, or the ℞ symbol in the symbol statement "Rx only," may be printed in bold or in regular type.

III. Compliance and Enforcement

Under the final rule, manufacturers may use symbols in labeling in the following scenarios. First, manufacturers may continue to use symbols with adjacent explanatory text. See, *e.g.*, § 801.15(c)(1)(i)(C) in this final rule.

Second, manufacturers may use a stand-alone symbol if the symbol is contained in a standard that FDA recognizes under its authority in section 514(c) of the FD&C Act for use on the labeling for medical devices (or on a subset of medical devices), is used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition, and is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary. See, *e.g.*, § 801.15(c)(1)(i)(D) in this final rule. In this second scenario, FDA has, through the section 514(c) recognition process, made a determination that the symbol, is likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c) of the FD&C Act. In this second scenario where a manufacturer wishes to use a stand-alone symbol that is in an SDO standard that has been recognized by FDA under section 514(c) to meet a requirement under the FD&C Act, such manufacturer would submit a declaration of conformity to FDA that certifies that the device is in conformity with the standard.

In a third scenario, the stand-alone symbol is not included in a standard that is recognized under FDA's section 514(c) authority or is in a standard that is recognized under FDA's section 514(c) authority but is not used according to the specifications for use of the symbol set forth in FDA's 514(c) recognition, manufacturers may use such symbol as a stand-alone symbol if the symbol has been established in a standard developed by an SDO, the manufacturer has made a determination that the symbol in the labeling for a particular device is likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c) of the FD&C Act, and such symbol is explained in a paper or electronic symbols glossary that is included in the labeling for the medical device, and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary. See, *e.g.*, § 801.15(c)(1)(i)(E) in this final rule. In this third scenario where a manufacturer uses a symbol that has not been recognized by FDA under section 514(c) of the FD&C Act or uses a symbol from an FDA recognized standard but not in accordance with the specifications for use of the symbol set forth in FDA's section 514(c) recognition, the burden is on the manufacturer to determine that the symbol is likely to be read and understood by the ordinary individual under customary conditions of purchase and use such that the use of the symbol in labeling is in compliance with section 502(c) of the FD&C Act. See, *e.g.*, § 801.15(c)(1)(i)(E)(*3*).

To clarify the requirements of the final rule, we include the following example:

Standard Z is a standard developed by an SDO. The scope of Standard Z is cardiac devices according to the specifications for use of the standard set forth by the SDO. FDA recognizes the standard for use of symbols in labeling for cardiac stents under its section 514(c) authority. As such, FDA's recognition is for a subset of the devices covered by Standard Z. Manufacturer A wishes to use stand-alone symbols (symbols without adjacent explanatory text) from Standard Z on cardiac stents. Manufacturer B wishes to use stand-alone symbols from Standard Z on cardiac pacemakers. Manufacturer C wishes to use stand-alone symbols from Standard Z on biliary stents, which are not cardiac devices.

Under the example, all the manufacturers could legally use the symbols from Standard Z with adjacent explanatory text. See, *e.g.*, § 801.15(c)(1)(i)(C). Manufacturer A can legally use stand-alone symbols from Standard Z in the labeling for cardiac stents, consistent with FDA's recognition of Standard Z for cardiac stents. See, *e.g.*, § 801.15(c)(1)(i)(D). Manufacturer A must explain the stand-alone symbols in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing Manufacturer A's device must bear a prominent and conspicuous statement identifying the location of the symbols glossary. See, *e.g.*, § 801.15(c)(1)(i)(D)(*3*). The symbol must be used according to the specifications of FDA's section 514(c) recognition, including the same meaning or explanatory text for the symbol in the symbols glossary as provided in FDA's recognition of Standard Z. See, *e.g.*, § 801.15(c)(1)(i)(D)(*2*). As discussed again later, if FDA subsequently withdraws recognition of Standard Z because the stand-alone symbol is not likely to be read and understood by the ordinary individual under customary conditions of purchase and use, Manufacturer A must stop using the stand-alone symbol. If FDA withdraws its recognition of Standard Z for other reasons, the Manufacturer A may continue to use the stand-alone symbols from Standard Z, that FDA no longer recognizes, for cardiac stents (see, *e.g.*, § 801.15(c)(1)(i)(E)(*2*)); but the use must be consistent with the specifications of Standard Z, including use of the explanatory text as provided in Standard Z (see, *e.g.*, § 801.15(c)(1)(i)(E)(*4*)), and the burden is on Manufacturer A to determine that the symbol's use is likely to be read and understood by the ordinary individual under customary conditions of purchase and use (see, *e.g.*, § 801.15(c)(1)(i)(E)(*3*)).

With regard to Manufacturer B, this manufacturer wishes to use a stand-alone symbol from Standard Z that would not be in accordance with the specifications for use of the symbol set forth in FDA's section 514(c) recognition. When FDA recognized Standard Z, the scope of which is cardiac devices, it limited the specifications for use of the symbols to cardiac stents. Manufacturer B wishes to use the stand-alone symbol from Standard Z on cardiac pacemakers.

Under the final rule, Manufacturer B may use stand-alone symbols outside the scope of FDA recognition (see, *e.g.*, § 801.15(c)(1)(i)(E)(*2*)), but within the specifications for use of Standard Z (see, *e.g.*, § 801.15(c)(1)(i)(E)(*4*)). In this scenario where Manufacturer B uses a symbol from Standard Z that has not been recognized under section 514(c) of the FD&C Act, the burden is on Manufacturer B to determine that the symbol's use on cardiac pacemakers, outside the scope of the FDA recognition, is likely to be read and understood by the ordinary individual under customary conditions of purchase and use. See, *e.g.*, § 801.15(c)(1)(i)(E)(*3*). The same is true and same provisions apply if Manufacturer A uses a stand-alone symbol on cardiac stents that is not in accordance with the specifications for use of FDA's section 514(c) recognition. In these cases, Manufacturer B (and Manufacturer A, if its use of the stand-alone symbol is not in accordance with the specifications for use set forth in FDA's section 514(c) recognition) must use the stand-alone symbols of Standard Z consistent with the specifications for use of the symbol set forth in Standard Z, including use of the explanatory text as provided in Standard Z. See, *e.g.*, § 801.15(c)(1)(i)(E)(*4*).

Finally, Manufacturer C wishes to use stand-alone symbols in Standard Z for biliary stents. Under this final rule, this stand-alone use is not allowed. As provided in this final rule, the use of stand-alone symbols must be in accordance with the specifications for use of the symbol set forth in the SDO-developed standard. Standard Z, as developed by the SDO, specifies that it applies to cardiac devices. As such, the use of stand-alone symbols from Standard Z in biliary stents would not be in accordance with the specifications for use of the symbols set forth in Standard Z. See, *e.g.*, § 801.15(c)(1)(i)(E)(*4*) in this final rule that requires that a stand-alone symbol be used according to the specifications for use of the symbol set forth in the SDO-developed standard that FDA does not recognize. Accordingly, Manufacturer C's use of the symbols from Standard Z on biliary stents would require adjacent explanatory text. See, *e.g.*, § 801.15(c)(1)(i)(C) in this final rule.

The final rule does not require the manufacturer to validate for a particular device, the stand-alone use of a symbol established in an SDO-developed standard, or part of a standard, that FDA has recognized under section 514(c) of the FD&C Act. In addition, the final rule does not require manufacturers to validate any stand-alone symbol. At the same time, this final rule does not preclude device manufacturers from undertaking any validation studies needed to assure that the use of the stand-alone symbol is likely to be read and understood by customary purchasers and users (section 502(c)) and complies with the other misbranding requirements of section 502 of the FD&C Act.

Manufacturers and importers should monitor complaints and adverse events that might be related to inadequate understanding of labeling, including misunderstanding about the meaning of stand-alone symbols used in the device labeling. Manufacturers must report adverse events as required by 21 CFR part 803. Reporting forms and instructions are available at *http://www.fda.gov/medwatch/safety.htm*. If, for example, postmarket surveillance data such as medical device reporting (MDR) suggests that the users of the device do not understand the meaning of a particular stand-alone symbol, and that such misunderstanding could lead to a safety issue, the Agency may take enforcement action against the device and device manufacturer.

If FDA withdraws recognition of a standard (*e.g.*, Standard Z in the example) because the stand-alone symbol is not likely to be read and understood by the ordinary individual under customary conditions of purchase and use, in that case, all manufacturers (both Manufacturers A and B) must stop using the stand-alone symbol upon withdrawal of recognition of the standard. FDA notes that it does not intend to take enforcement action under section 502(c) of the FD&C Act on the basis that the symbol is not likely to be read and understood by the ordinary individual under customary conditions of purchase and use that otherwise meets the requirements of this rule unless and until FDA issues either a notice of SDO-standard withdrawal applicable to the use or a symbol-specific **Federal Register** notice announcing FDA's determination that the symbol is not likely to be read and understood by the ordinary individual under customary conditions of purchase and use as required by section 502(c), and, as such, the future date on which FDA intends to take enforcement action against stand-alone use of such symbol.

In situations where FDA withdraws recognition of a standard, or portion thereof, for reasons other than that the stand-alone symbol is not likely to be read and understood as required by section 502(c) of the FD&C Act, manufacturers may continue to use symbols within that standard without adjacent text if the manufacturer determines that the symbol is likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c). Therefore, in the example, if FDA withdraws its recognition of Standard Z for use of symbols in labeling for cardiac stents for a reason other than that the ordinary individual is not likely to read and understand the symbols under customary conditions of purchase and use in compliance with section 502(c) of the FD&C Act, Manufacturer A and Manufacturer B may continue to use their stand-alone symbols under § 801.15(c)(1)(i)(E) in this final rule. If FDA provided a meaning or explanatory text in its recognition of Standard Z, after the withdrawal Manufacturer A must use the symbols from Standard Z according to the specifications of Standard Z, including the same meaning or explanation in its symbols glossary as provided in Standard Z for any remaining permitted use under the FDA withdrawal notice. See, *e.g.*, § 801.15(c)(1)(i)(E)(*4*) and (iii)(B) in this final rule.

With regard to Manufacturer C, if it uses stand-alone symbols that are outside the scope of the SDO-developed standard, FDA intends to enforce compliance after the effective date of this final rule. See, *e.g.*, § 801.15(c)(1)(ii) in this final rule.

IV. Legal Authority for the Final Rule

A device is misbranded under section 502(c) of the FD&C Act if any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. Additionally, a device is misbranded under section 502(a) of the FD&C Act if its labeling is false or misleading in any particular. A device is also misbranded under section 502(f) of the FD&C Act unless its labeling bears adequate directions for use.

Under section 201(m) of the FD&C Act, the term "labeling" means all labels and other written, printed, or graphic matter: (1) Upon any article or any of its containers or wrappers or (2) accompanying such article. Under section 201(k) of the FD&C Act, the term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of the FD&C Act that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

Section 514(c)(1)(A) of the FD&C Act authorizes FDA to recognize, by publication in the **Federal Register,** all or part of an appropriate standard established by a nationally or internationally recognized standard development organization for which a person may submit a declaration of conformity in order to meet a premarket submission requirement or other requirement under the FD&C Act to which such standard is applicable. Section 514(c)(1)(B) of the FD&C Act further provides that a person may elect to use data, or information, other than data required by a standard recognized by FDA to meet any requirement regarding devices under the FD&C Act. Section 514(c)(2) of the FD&C Act allows FDA to withdraw recognition of a standard through publication of a notice in the **Federal Register** if FDA determines that the standard is no longer appropriate for meeting a device requirement under the FD&C Act.

Section 701(a) of the FD&C Act (21 U.S.C. 371(a)) gives FDA the authority to issue regulations for the efficient enforcement of the FD&C Act.

V. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. We believe that the final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule imposes no new burdens, we certify that the final rule would not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $146 million, using the most current (2015) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

Summary

The final rule would provide medical device manufacturers with the option to use symbols established in SDO-developed standards for stand-alone use in labeling to communicate information to end users. Under the final rule, manufacturers would be allowed to substitute labels containing only written statements (text-only labels) or symbols with adjacent explanatory text with a label containing stand-alone symbols, provided that such symbols are established in a standard developed by a SDO as long as: (1) The standard is recognized by FDA under its authority under section 514(c) of the FD&C Act and the symbol is used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition, or alternatively, (2) if the symbol is not included in a standard recognized by FDA under section 514(c) of the FD&C Act or the symbol is in a standard recognized by FDA but is not used according to the specifications for use of the symbol set out in the FDA section 514(c) recognition, the device manufacturer otherwise determines that the symbol is likely to be read and understood by the ordinary individual under customary conditions of purchase and use and uses the symbol according to the specifications for use of the symbol set forth in the SDO-developed standard. In addition, in either case, the symbol must be explained in a written or electronic symbols glossary that is included in the labeling for the medical device. Furthermore, the labeling on or within the package containing the device must bear a prominent and conspicuous statement identifying the location of the glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used. The use of such symbols must also comply with other applicable labeling requirements of the FD&C Act, such as section 502(a) and section 502(f). In addition, the final rule allows the use of the symbol statement "Rx Only" or "℞ only" for labeling of prescription devices.

Medical device manufacturers would only choose to use stand-alone symbols, as allowed by the final rule, if they expect a positive net benefit (estimated benefits minus estimated costs). Hence, the final rule is expected to provide a non-negative net benefit to each manufacturer that opts to use stand-alone symbols. Choosing to use stand-alone symbols under the final rule would potentially reduce the costs associated with designing and redesigning the labels on medical devices that are currently marketed in the United States and the EU. The estimated annual benefits range from $7.9 million to $25.5 million at a 3 percent discount rate, and $7.7 million to $25.0 million at a 7 percent discount rate. Those that opt to use stand-alone symbols under the rule would incur one-time administrative costs to redesign their labeling and create a symbols glossary that is included in the labeling for the device, and recurring costs to revise their glossaries, as necessary. Annualized over 20 years, we estimate total costs to range between $1.1 million to $3.2 million at a 3 percent discount rate, and from $1.1 million to $3.3 million at a 7 percent discount rate. Annualized over 20 years, net benefits range from $6.8 million to $22.3 million at a 3 percent discount rate, and from $6.6 million to $21.7 million at a 7 percent discount rate. The costs and benefits accrue to the same entities, however, so any firm making the change to stand-alone symbols would, on net, reduce costs.

FDA also examined the economic implications of the final rule as required by the Regulatory Flexibility Act. If a rule will have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires Agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. We estimated the final rule's approximate impact on small entities using the percent costs per device distinguishable by Universal Product Code (UPC): The ratio between unit labeling costs and revenues among small entities. Our estimates indicate that the average percent costs per UPC ranges from 0.01 to 0.46 percent. Because companies can choose whether or not to use stand-alone symbols under the final rule, the Agency concludes that this final rule would not have a significant adverse impact on any small entities. Furthermore, our analysis suggests that companies could reap moderate cost-savings by using stand-alone symbols in device labeling. On average, companies that use stand-alone symbols under this final rule could expect to receive an average annual cost savings ranging from $1,500 to $4,500 per UPC. Because using stand-alone symbols is expected to lower the marginal cost of producing exports, medical device manufacturers, including small entities, may be able to increase their production either by starting to export products or by exporting more products.

The full analysis of economic impacts is available in the docket for this final rule (FDA–2013–N–0125) and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm* (Ref. 6).

VI. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are provided in the following paragraphs with an estimate of the annual reporting and third-party disclosure burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Medical Devices: Use of Symbols in Labeling—Glossary to Support the Use of Symbols in Labeling.

Description: FDA is issuing a final rule revising medical device and certain biological product labeling regulations by explicitly allowing for the optional use in medical device labeling of stand-alone symbols established in an SDO-developed standard.

In particular, FDA will allow the use of stand-alone graphical representations of information, or symbols in the labeling for the medical devices, if the symbols are established in a standard developed by an SDO as long as: (1) The standard is recognized by FDA under its authority under section 514(c) of the FD&C Act and the symbol is used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition, or alternatively, (2) if the symbol is not included in a standard recognized by FDA under section 514(c) of the FD&C Act or the symbol is in a standard recognized by FDA but is not used according to the specifications for use of the symbol set out in the FDA section 514(c) recognition, the device manufacturer otherwise determines that the symbol is likely to be read and understood by the ordinary individual under customary conditions of purchase and use and uses the symbol according to the specifications for use of the symbol set forth in the SDO-developed standard. In addition, in either case, the symbol must be explained in a written or electronic symbols glossary that is included in the labeling for the medical device. Furthermore, the labeling on or within the package containing the device must bear a prominent and conspicuous statement identifying the location of the glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used. The use of such symbols must also comply with other applicable labeling requirements of the FD&C Act, such as section 502(a) and section 502(f). The final rule also allows the use of the symbol statement "Rx Only" or "℞ only."

Description of Respondents: The likely respondents for this collection of information are domestic and foreign device manufacturers who plan to use stand-alone symbols on the labels and/or labeling for their devices marketed in the United States.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Glossary	3,000	1	3,000	1	3,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Glossary	3,000	1	3,000	4	12,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated burden is based on the data in a similar collection for recommended glossary and educational outreach approved under OMB control number 0910–0553 (Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use). As such, the PRA also covers the requirements of this final rule to submit the symbols glossary to FDA in otherwise required submissions during the premarket review process and to disclose it to third parties in otherwise required device labeling, which means adding to such submission or labeling a compiled listing of each SDO-established symbol used in the labeling for the device; the title and designation number of the SDO-developed standard containing the symbol; and the title of the symbol and its reference number, if any, in the standard; and the meaning or explanatory text for the symbol as provided in the FDA recognition or, if FDA has not recognized the standard or portion of the standard in which the symbol is located or the symbol is used not in accordance with the specifications for use of the symbol set out in the FDA section 514(c) recognition, the explanatory text as provided in the standard. We assume that the additional requirement of identifying in the symbols glossary the SDO-developed standard establishing the symbol and its reference number if any, not included in proposed rule, results in no significant additional cost burden.

The information collection provisions in this final rule have been submitted to OMB (control number 0910–0740) for review as required by section 3507(d) of the Paperwork Reduction Act of 1995.

Before the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This final rule refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subparts A through E have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 801 and § 809.10 have been approved under OMB control number 0910–0485; and the collections of information in §§ 660.2, 660.28, 660.35, 660.45, and 660.55 have been approved under OMB control number 0910–0338.

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Effective Date

This rule is effective on September 13, 2016.

IX. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

X. References

The following references are on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov*. FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. Frequently Asked Questions on Recognition of Consensus Standards; Guidance for Industry and FDA Staff, September 2007, available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm074973.htm*.
2. The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113), section 12(d), 110 Stat. 783.
3. Office of Management and Budget, OMB Circular A–119 (63 FR 8546, February 19, 1998) (Final Revision).
4. Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use; Guidance for Industry and FDA Staff, FDA, November 2004, available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm085404.htm*.
5. Alternative to Certain Prescription Device Labeling Requirements; Guidance for Industry, FDA, January 2000, available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm072747.htm*.
6. Use of Symbols in Medical Device Labeling: Final Regulatory Impact Analysis; Final Regulatory Flexibility Analysis; Unfunded Mandates Reform Act Analysis; available at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/ucm350746.htm*.

List of Subjects

21 CFR Part 660

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 809

Labeling, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.*, as amended), the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 660, 801, and 809 are amended as follows:

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372; 42 U.S.C. 216, 262, 263, 263a, 264.

■ 2. Amend § 660.2 by revising paragraph (c) to read as follows:

§ 660.2 General requirements.

* * * * *

(c) *Labeling.* (1) In addition to the items required by other applicable labeling provisions of this subchapter, the following shall also be included:

(i) Indication of the source of the product immediately following the proper name on both the final container and package label, *e.g.*, human, guinea pig.

(ii) Name of the test method(s) recommended for the product on the package label and on the final container label when capable of bearing a full label (see § 610.60(a) of this chapter).

(iii) A warning on the package label and on the final container label if capable of bearing a full label (see § 610.60(a) of this chapter) indicating that the product and antigen if supplied, shall be handled as if capable of transmitting hepatitis.

(iv) If the product is dried, the final container label shall indicate "Reconstitution date: ______" and a statement indicating the period within which the product may be used after reconstitution.

(v) The package shall include a package enclosure providing:

(A) Adequate instructions for use;

(B) A description of all recommended test methods; and

(C) Warnings as to possible hazards, including hepatitis, in handling the product and any ancillary reagents and materials accompanying the product.

(2) The applicant may provide the labeling information referenced in paragraph (c)(1) of this section in the form of:

(i) A symbol accompanied by explanatory text adjacent to the symbol;

(ii) A symbol not accompanied by adjacent explanatory text that:

(A) Is contained in a standard that FDA recognizes under its authority in section 514(c) of the Federal Food, Drug, and Cosmetic Act;

(B) Is used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition; and

(C) Is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used; or

(iii) A symbol not accompanied by adjacent explanatory text that:

(A) Is established in a standard developed by a standards development organization (SDO);

(B) Is not contained in a standard that is recognized by FDA under its authority in section 514(c) of the Federal Food, Drug, and Cosmetic Act or is contained in a standard that is recognized by FDA but is not used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition;

(C) Is determined by the manufacturer to be likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c) of the Federal Food, Drug, and Cosmetic Act;

(D) Is used according to the specifications for use of the symbol set forth in the SDO-developed standard; and

(E) Is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used.

(3) The use of symbols to provide the labeling information referenced in paragraph (c)(1) of this section which do not meet the requirements of paragraph (c)(2) of this section renders a device misbranded under section 502(c) of the Federal Food, Drug, and Cosmetic Act.

(4) For purposes of paragraph (c)(2) of this section:

(i) An SDO is an organization that is nationally or internationally recognized and that follows a process for standard development that is transparent, (*i.e.,* open to public scrutiny), where the participation is balanced, where an appeals process is included, where the standard is not in conflict with any statute, regulation, or policy under which FDA operates, and where the standard is national or international in scope.

(ii) The term "symbols glossary" means a compiled listing of:

(A) Each SDO-established symbol used in the labeling for the device;

(B) The title and designation number of the SDO-developed standard containing the symbol;

(C) The title of the symbol and its reference number, if any, in the standard; and

(D) The meaning or explanatory text for the symbol as provided in the FDA recognition or, if FDA has not recognized the standard or portion of the standard in which the symbol is located or the symbol is not used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition, the explanatory text as provided in the standard.

* * * * *

■ 3. Amend § 660.20 by revising paragraph (a) to read as follows:

§ 660.20 Blood Grouping Reagent.

(a) *Proper name and definition.* The proper name of this product shall be Blood Grouping Reagent and it shall consist of an antibody-containing fluid containing one or more of the blood grouping antibodies listed in § 660.28(a)(4).

* * * * *

■ 4. Revise § 660.28 to read as follows:

§ 660.28 Labeling.

(a) In addition to the applicable labeling requirements of §§ 610.62 through 610.65 and § 809.10 of this chapter, and in lieu of the requirements in §§ 610.60 and 610.61 of this chapter, the following requirements shall be met:

(1) *Final container label*—(i) *Color coding.* The final container label of all Blood Grouping Reagents shall be completely white, except that all or a portion of the final container label of the following Blood Grouping Reagents may be color coded with the specified color which shall be a visual match to a specific color sample designated by the Director, Center for Biologics Evaluation and Research. Printing on all final container labels shall be in solid black. A logo or company name may be placed on the final container label; however, the logo or company name shall be located along the bottom or end of the label, outside the main panel.

Blood grouping reagent	Color of label paper
Anti-A	Blue.
Anti-B	Yellow.
Slide and rapid tube test blood grouping reagents only:	
Anti-C	Pink.
Anti-D	Gray.
Anti-E	Brown.
Anti-CDE	Orange.
Anti-c̄	Lavender.
Anti-e	Green.

(ii) *Required information.* The proper name "Blood Grouping Reagent" need not appear on the final container label provided the final container is distributed in a package and the package label bears the proper name. The final container label shall bear the following information:

(A) Name of the antibody or antibodies present as set forth in paragraph (a)(4) of this section.

(B) Name, address (including ZIP code), and license number of the manufacturer.

(C) Lot number, including sublot designations.

(D) Expiration date.

(E) Source of product if other than human plasma or serum.

(F) Test method(s) recommended.

(G) Recommended storage temperature in degrees Celsius.

(H) Volume of product if a liquid, or equivalent volume for a dried product if it is to be reconstituted.

(I) If a dried product, to remind users to record the reconstitution date on the label, the statement "RECONSTITUTION DATE ______. EXPIRES 1 YEAR AFTER RECONSTITUTION DATE."

(iii) *Lettering size.* The type size for the specificity of the antibody designation on the labels of a final container with a capacity of less than 5 milliliters shall be not less than 12 point. The type size for the specificity of the antibody designations on the label of a container with a capacity of 5 milliliters or more shall be not less than 18 point.

(iv) *Visual inspection.* When the label has been affixed to the final container, a sufficient area of the container shall remain uncovered for its full length or no less than 5 millimeters of the lower circumference to permit inspection of the contents. The label on a final product container for antibodies Anti-c, Anti-k, or Anti-s shall display a bar immediately over the specificity letter used in the name, *i.e.,* Anti-c̄, Anti-k̄, or Anti-s̄.

(2) *Package label.* The following information shall appear either on the package label or on the final container label if it is visible within the package.

(i) Proper name of the product.

(ii) Name of the antibody or antibodies present as set forth in paragraph (a)(4) of this section.

(iii) Name, address (including ZIP Code), and license number of the manufacturer.

(iv) Lot number, including sublot designations.

(v) Expiration date.

(vi) Preservative used and its concentration.

(vii) Number of containers, if more than one.

(viii) Volume or equivalent volume for dried products when reconstituted, and precautions for adequate mixing when reconstituting.

(ix) Recommended storage temperature in degrees Celsius.

(x) Source of the product if other than human serum or plasma.

(xi) Reference to enclosed package insert.

(xii) If a dried product, a statement indicating the period within which the product may be used after reconstitution.

(xiii) The statement: "FOR IN VITRO DIAGNOSTIC USE."

(xiv) The statement: "MEETS FDA POTENCY REQUIREMENTS."

(xv) If human blood was used in manufacturing the product, the statement: "CAUTION: ALL BLOOD PRODUCTS SHOULD BE TREATED AS POTENTIALLY INFECTIOUS. SOURCE MATERIAL FROM WHICH THIS PRODUCT WAS DERIVED WAS FOUND NEGATIVE WHEN TESTED IN ACCORDANCE WITH CURRENT FDA REQUIRED TESTS. NO KNOWN TEST METHODS CAN OFFER ASSURANCE THAT PRODUCTS DERIVED FROM HUMAN BLOOD WILL NOT TRANSMIT INFECTIOUS AGENTS."

(xvi) A statement of an observable indication of an alteration of the product, *e.g.*, turbidity, color change, precipitate, that may indicate possible deterioration of the product.

(3) *Package insert.* Each final container of Blood Grouping Reagent shall be accompanied by a package insert meeting the requirements of § 809.10. If two or more final containers requiring identical package inserts are placed in a single package, only one package insert per package is required.

(4) *Names of antibodies.*

Blood Group Designation for Container Label

Anti-A	Anti-Jk^b
Anti-A$_1$	Anti-Js^a
Anti-A, B	Anti-Js^b
Anti-A and B	Anti-K
Anti-B	Anti-$\bar{k}$
Anti-C	Anti-Kp^a
Anti-C^w	Anti-Kp^b
Anti- $\bar{c}$	Anti-Le^a
Anti-CD	Anti-Le^b
Anti-CDE	Anti-Lu^a
Anti-Co^b	Anti-Lu^b
Anti-D	Anti-M
Anti-DE	Anti-M^g
Anti-Di^a	Anti-N
Anti-E	Anti-P$_1$
Anti-e	Anti-S
Anti-Fy^a	Anti-$\bar{s}$
Anti-Fy^b	Anti-U
Anti-I	Anti-Wr^a
Anti-Jk^a	Anti-Xg^a

(b) The applicant may provide the labeling information referenced in paragraph (a) of this section in the form of:

(1) A symbol accompanied by explanatory text adjacent to the symbol;

(2) A symbol not accompanied by adjacent explanatory text that:

(i) Is contained in a standard that FDA recognizes under its authority in section 514(c) of the Federal Food, Drug, and Cosmetic Act;

(ii) Is used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition; and

(iii) Is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used; or

(3) A symbol not accompanied by adjacent explanatory text that:

(i) Is established in a standard developed by a standards development organization (SDO);

(ii) Is not contained in a standard that is recognized by FDA under its authority in section 514(c) of the Federal Food, Drug, and Cosmetic Act or is contained in a standard that is recognized by FDA but is not used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition;

(iii) Is determined by the manufacturer to be likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c) of the Federal Food, Drug, and Cosmetic Act;

(iv) Is used according to the specifications for use of the symbol set forth in the SDO-developed standard; and

(v) Is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used.

(c) The use of symbols in device labeling to provide the labeling information referenced in paragraph (a) of this section which do not meet the requirements in paragraph (b) of this section renders a device misbranded under section 502(c) of the Federal Food, Drug, and Cosmetic Act.

(d) For purposes of paragraph (b) of this section:

(1) An SDO is an organization that is nationally or internationally recognized and that follows a process for standard development that is transparent, (*i.e.*, open to public scrutiny), where the participation is balanced, where an appeals process is included, where the standard is not in conflict with any statute, regulation, or policy under which FDA operates, and where the standard is national or international in scope.

(2) The term "symbols glossary" means a compiled listing of:

(i) Each SDO-established symbol used in the labeling for the device;

(ii) The title and designation number of the SDO-developed standard containing the symbol;

(iii) The title of the symbol and its reference number, if any, in the standard; and

(iv) The meaning or explanatory text for the symbol as provided in the FDA recognition or, if FDA has not recognized the standard or portion of the standard in which the symbol is located or the symbol is not used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition, the explanatory text as provided in the standard.

■ 5. Revise § 660.35 to read as follows:

§ 660.35 Labeling.

(a) In addition to the items required by § 809.10 of this chapter and other applicable labeling provisions of this chapter, the following information shall be included in the labeling:

(1)(i) A logo or company name may be placed on the final container label, however, the logo or company name shall be located along the bottom or end of the label, outside of the main panel.

(ii) If washing the cells is required by the manufacturer, the container label shall include appropriate instructions; if the cells should not be washed before use, *e.g.*, if washing will adversely affect the product, the package insert shall explain.

(2) The container label of Group O cells shall state:

"FOR USE IN DETECTION OF UNEXPECTED ANTIBODIES" or "FOR USE IN IDENTIFICATION OF UNEXPECTED ANTIBODIES" or "NOT FOR USE IN DETECTION OR IDENTIFICATION OF UNEXPECTED ANTIBODIES".

(3) Except as provided in this section, the container and package labels shall state the percentage of red blood cells in the suspension either as a discrete figure with a variance of more than [+/−] 1 percentage unit or as a range the extremes of which differ by no more than 2 percentage units. If the stated red blood cell concentration is less than 2 percent, the variance shall be no more than [+/−] 0.5 percentage unit.

(4) The words "pooled cells" shall appear on the container and package labels of products prepared from pooled cells. The package label or package insert shall state that pooled cells are not recommended for pre-transfusion tests, done in lieu of a major crossmatch, to detect unexpected antibodies in patients' samples.

(5) The package insert of a pooled product intended for detection of unexpected antibodies shall identify the number of donors contributing to the pool. Products designed exclusively for ABO Serum Grouping and umbilical cord cells need not identify the number of donors in the pool.

(6) When the product is a multicontainer product, *e.g.*, a cell panel, the container label and package label shall be assigned the same identifying lot number, and shall also bear a number or symbol to distinguish one container from another. Such number or symbol shall also appear on the antigenic constitution matrix.

(7) The package label or package insert shall state the blood group antigens that have been tested for and found present or absent on the cells of each donor, or refer to such information in an accompanying antigenic constitution matrix. Cells for ABO Serum Grouping are exempt from this requirement. The package insert or antigen constitution matrix shall list each of the antigens tested with only one source of antibody.

(8) The package label or package insert shall bear the cautionary statement: "The reactivity of the product may decrease during the dating period."

(9) The package insert of a product intended for the detection or identification of unexpected antibodies shall note that the rate at which antigen reactivity (*e.g.*, agglutinability) is lost is partially dependent upon individual donor characteristics that are neither controlled nor predicted by the manufacturer.

(10) The package insert shall provide adequate directions for use.

(11) The package insert shall bear the statement:

"CAUTION: ALL BLOOD PRODUCTS SHOULD BE TREATED AS POTENTIALLY INFECTIOUS. SOURCE MATERIAL FROM WHICH THIS PRODUCT WAS DERIVED WAS FOUND NEGATIVE WHEN TESTED IN ACCORDANCE WITH CURRENT FDA REQUIRED TESTS. NO KNOWN TEST METHODS CAN OFFER ASSURANCE THAT PRODUCTS DERIVED FROM HUMAN BLOOD WILL NOT TRANSMIT INFECTIOUS AGENTS."

(12) The package insert or the antigenic constitution matrix for each lot of product shall specify the date of manufacture or the length of the dating period.

(13) Manufacturers shall identify with a permanent donor code in the product labeling each donor of peripheral blood used for detection or identification of unexpected antibodies.

(b) The applicant may provide the labeling information referenced in paragraph (a) of this section in the form of:

(1) A symbol accompanied by explanatory text adjacent to the symbol;

(2) A symbol not accompanied by adjacent explanatory text that:

(i) Is contained in a standard that FDA recognizes under its authority in section 514(c) of the Federal Food, Drug, and Cosmetic Act;

(ii) Is used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition; and

(iii) Is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used; or

(3) A symbol not accompanied by adjacent explanatory text that:

(i) Is established in a standard developed by a standards development organization (SDO);

(ii) Is not contained in a standard that is recognized by FDA under its authority in section 514(c) of the Federal Food, Drug, and Cosmetic Act or is contained in a standard that is recognized by FDA but is not used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition;

(iii) Is determined by the manufacturer to be likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c) of the Federal Food, Drug, and Cosmetic Act;

(iv) Is used according to the specifications for use of the symbol set forth in the SDO-developed standard; and

(v) Is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used.

(c) The use of symbols in device labeling to provide the labeling information referenced in paragraph (a) of this section which do not meet the requirements of paragraph (b) of this section renders a device misbranded under section 502(c) of the Federal Food, Drug, and Cosmetic Act.

(d) For purposes of paragraph (b) of this section:

(1) An SDO is an organization that is nationally or internationally recognized and that follows a process for standard development that is transparent, (*i.e.*, open to public scrutiny), where the participation is balanced, where an appeals process is included, where the standard is not in conflict with any statute, regulation, or policy under which FDA operates, and where the standard is national or international in scope.

(2) The term "symbols glossary" means a compiled listing of:

(i) Each SDO-established symbol used in the labeling for the device;

(ii) The title and designation number of the SDO-developed standard containing the symbol;

(iii) The title of the symbol and its reference number, if any, in the standard; and

(iv) The meaning or explanatory text for the symbol as provided in the FDA recognition or, if FDA has not recognized the standard or portion of the standard in which the symbol is located or the symbol is not used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition, the explanatory text as provided in the standard.

■ 6. Revise § 660.45 to read as follows:

§ 660.45 Labeling.

(a) In addition to the requirements of §§ 610.60, 610.61, and 809.10 of this chapter, the labeling shall bear the following:

(1) The "d and y" antigen subtype and the source of the product to follow immediately the proper name on both the final container label and the package label. If the product is intended to identify antibodies to the "r and w" antigen subtype, the antigen subtype designation shall include the "r and w" antigen subtype.

(2) The name of the test method(s) recommended for use of the product on the package label and on the final container label, when capable of bearing a full label (see § 610.60(a) of this chapter).

(3) A warning on the package label and on the final container label stating that the product is capable of transmitting hepatitis and should be handled accordingly.

(4) The package shall include a package insert providing:

(i) Detailed instructions for use,

(ii) An adequate description of all recommended test methods, and

(iii) Warnings as to possible hazards, including hepatitis transmitted in handling the product and any ancillary reagents and materials accompanying the product.

(b) The applicant may provide the labeling information referenced in paragraph (a) of this section in the form of:

(1) A symbol accompanied by explanatory text adjacent to the symbol;

(2) A symbol not accompanied by adjacent explanatory text that:

(i) Is contained in a standard that FDA recognizes under its authority in section 514(c) of the Federal Food, Drug, and Cosmetic Act;

(ii) Is used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition; and

(iii) Is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used; or

(3) A symbol not accompanied by adjacent explanatory text that:

(i) Is established in a standard developed by a standards development organization (SDO);

(ii) Is not contained in a standard that is recognized by FDA under its authority in section 514(c) of the Federal Food, Drug, and Cosmetic Act or is contained in a standard that is recognized by FDA but is not used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition;

(iii) Is determined by the manufacturer to be likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c) of the Federal Food, Drug, and Cosmetic Act;

(iv) Is used according to the specifications for use of the symbol set forth in the SDO-developed standard; and

(v) Is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used.

(c) The use of symbols in device labeling to provide the labeling information referenced in paragraph (a) of this section which do not meet the requirements of paragraph (b) of this section renders a device misbranded under section 502(c) of the Federal Food, Drug, and Cosmetic Act.

(d) For purposes of paragraph (b) of this section:

(1) An SDO is an organization that is nationally or internationally recognized and that follows a process for standard development that is transparent, (*i.e.,* open to public scrutiny), where the participation is balanced, where an appeals process is included, where the standard is not in conflict with any statute, regulation, or policy under which FDA operates, and where the standard is national or international in scope.

(2) The term "symbols glossary" means a compiled listing of:

(i) Each SDO-established symbol used in the labeling for the device;

(ii) The title and designation number of the SDO-developed standard containing the symbol;

(iii) The title of the symbol and its reference number, if any, in the standard; and

(iv) The meaning or explanatory text for the symbol as provided in the FDA recognition or, if FDA has not recognized the standard or portion of the standard in which the symbol is located or the symbol is not used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition, the explanatory text as provided in the standard.

■ 7. Amend § 660.50 by revising paragraph (a) to read as follows:

§ 660.50 Anti-Human Globulin.

(a) *Proper name and definition.* The proper name of this product shall be Anti-Human Globulin which shall consist of one or more antiglobulin antibodies identified in § 660.55(a)(4).

* * * * *

■ 8. Revise § 660.55 to read as follows:

§ 660.55 Labeling.

(a) In addition to the applicable labeling requirements of §§ 610.62 through 610.65 and § 809.10 of this chapter, and in lieu of the requirements in §§ 610.60 and 610.61 of this chapter, the following requirements shall be met:

(1) *Final container label*—(i) *Color coding.* The main panel of the final container label of all Anti-IgG, -C3d (polyspecific) reagents shall be white or colorless and printing shall be solid dark contrasting lettering. The main panel of the final container label of all other Anti-Human Globulin reagents shall be black with solid white lettering. A logo or company name may be placed on the final container label; however, the logo or company name shall be located along the bottom or end of the label, outside of the main panel.

(ii) *Required information.* The proper name "Anti-Human Globulin" need not appear on the final container label provided the final container is distributed in a package and the package label bears the proper name. The final container label shall bear the following information:

(A) Name of the antibody or antibodies present as set forth in paragraph (a)(4) of this section. Anti-Human Globulin may contain one or more antibodies to either immunoglobulins or complement components but the name of each significant antibody must appear on the final container label (*e.g.,* anti-C3b,

-C3d, -C4d). The final container labels of polyspecific Anti-Human Globulin are not required to identify antibody specificities other than anti-IgG and anti-C3d but the reactivity of the Anti-Human Globulin shall be accurately described in the package insert.

(B) Name, address, and license number of the manufacturer.

(C) Lot number, including any sublot designations.

(D) Expiration date.

(E) Source of the product.

(F) Recommended storage temperature in degrees Celsius.

(G) Volume of product.

(H) Appropriate cautionary statement if the Anti-Human Globulin is not polyspecific. For example, "DOES NOT CONTAIN ANTIBODIES TO IMMUNOGLOBULINS" or "DOES NOT CONTAIN ANTIBODIES TO COMPLEMENT COMPONENTS."

(I) If the final container is not enclosed in a package, all items required for a package label shall appear on the container label.

(iii) *Lettering size.* The type size for the designation of the specific antibody on the label of a final container shall be not less than 12 point, unless otherwise approved by the Director, Center for Biologics Evaluation and Research. The prefix anti- and other parts of the name such as polyspecific may appear in smaller type.

(iv) *Visual inspection.* When the label has been affixed to the final container, a sufficient area of the container shall remain uncovered for its full length or for no less than 5 millimeters of the lower circumference to permit inspection of the contents.

(2) *Package label.* The following items shall appear either on the package label or on the final container label if see-through packaging is used:

(i) Proper name of the product, and the name of the antibody or antibodies as listed in paragraph (a)(4) of this section.

(ii) Name, address (including ZIP code), and license number of the manufacturer.

(iii) Lot number, including any sublot designations.

(iv) Expiration date.

(v) Preservative(s) used and its concentration.

(vi) Number of containers, if more than one.

(vii) Recommended storage temperature in degrees Celsius.

(viii) Source of the product.

(ix) Reference to enclosed package insert.

(x) The statement: "For In Vitro Diagnostic Use."

(xi) The statement: "Meets FDA Potency Requirements."

(xii) A statement of an observable indication of an alteration of the product, *e.g.*, turbidity, color change, precipitate, that may indicate possible deterioration of the product.

(xiii) Appropriate cautions.

(3) *Package insert.* Each final container of Anti-Human Globulin shall be accompanied by a package insert meeting the requirements of § 809.10 of this chapter. If two or more final containers requiring identical package inserts are placed in a single package, only one package insert per package is required.

(4) *Names of antibodies.* Anti-Human Globulin preparations may contain one or more of the antibody specificities listed in this paragraph as described in paragraph (a)(1)(ii)(A) of this section.

Antibody designation on container label	Definition
(1) Anti-IgG, -C3d; Polyspecific	Contains anti-IgG and anti-C3d (may contain other anticomplement and anti-immunoglobulin antibodies).
(2) Anti-IgG	Contains anti-IgG with no anti-complement activity (not necessarily gamma chain specific).
(3) Anti-IgG; heavy chains	Contains only antibodies reactive against human gamma chains.
(4) Anti-C3b	Contains only C3b antibodies with no anti-immunoglobulin activity. *Note:* The antibody produced in response to immunization is usually directed against the antigenic determinant which is located in the C3c subunit; some persons have called this antibody "anti-C3c." In product labeling, this antibody should be designated anti-C3b.
(5) Anti-C3d	Contains only C3d antibodies with no anti-immunoglobulin activity.
(6) Anti-C4b	Contains only C4b antibodies with no anti-immunoglobulin activity.
(7) Anti-C4d	Contains only C4d antibodies with no anti-immunoglobulin activity.

(b) The applicant may provide the labeling information referenced in this section in the form of:

(1) A symbol accompanied by explanatory text adjacent to the symbol;

(2) A symbol not accompanied by adjacent explanatory text that:

(i) Is contained in a standard that FDA recognizes under its authority in section 514(c) of the Federal Food, Drug, and Cosmetic Act;

(ii) Is used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition; and

(iii) Is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used; or

(3) A symbol not accompanied by adjacent explanatory text that:

(i) Is established in a standard developed by a standards development organization (SDO);

(ii) Is not contained in a standard that is recognized by FDA under its authority in section 514(c) or is contained in a standard that is recognized by FDA but is not used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition;

(iii) Is determined by the manufacturer to be likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c) of the Federal Food, Drug, and Cosmetic Act;

(iv) Is used according to the specifications for use of the symbol set forth in the SDO-developed standard; and

(v) Is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in

Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used.

(c) The use of symbols in device labeling to provide the labeling information referenced in paragraph (a) of this section which do not meet the requirements of paragraph (b) of this section renders a device misbranded under section 502(c) of the Federal Food, Drug, and Cosmetic Act.

(d) For purposes of paragraph (b) of this section:

(1) An SDO is an organization that is nationally or internationally recognized and that follows a process for standard development that is transparent, (*i.e.*, open to public scrutiny), where the participation is balanced, where an appeals process is included, where the standard is not in conflict with any statute, regulation, or policy under which FDA operates, and where the standard is national or international in scope.

(2) The term "symbols glossary" means a compiled listing of:

(i) Each SDO-established symbol used in the labeling for the device;

(ii) The title and designation number of the SDO-developed standard containing the symbol;

(iii) The title of the symbol and its reference number, if any, in the standard; and

(iv) The meaning or explanatory text for the symbol as provided in the FDA recognition or, if FDA has not recognized the standard or portion of the standard in which the symbol is located or the symbol is not used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition, the explanatory text as provided in the standard.

PART 801—LABELING

■ 9. The authority citation for part 801 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360d, 360i, 360j, 371, 374.

■ 10. Amend § 801.15 by revising the section heading and paragraph (c)(1) to read as follows:

§ 801.15 Medical devices; prominence of required label statements; use of symbols in labeling.

* * * * *

(c)(1)(i) All words, statements, and other information required by or under authority of the act to appear on the label or labeling for a device shall appear thereon in one or more of the following formats:

(A) The English language;

(B) In the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be substituted for English;

(C) A symbol accompanied by adjacent explanatory English text, or text in the predominant language of the Territory, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English;

(D) A symbol not accompanied by adjacent explanatory text that:

(*1*) Is contained in a standard that FDA recognizes under its authority in section 514(c) of the act;

(*2*) Is used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition; and

(*3*) Is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used;

(E) A symbol not accompanied by adjacent explanatory text that:

(*1*) Is established in a standard developed by a standards development organization (SDO);

(*2*) Is not contained in a standard that is recognized by FDA under its authority in section 514(c) of the act or is contained in a standard that is recognized by FDA but is not used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition;

(*3*) Is determined by the manufacturer to be likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c) of the act;

(*4*) Is used according to the specifications for use of the symbol set forth in the SDO-developed standard; and

(*5*) Is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used;

(F) The symbol statement "Rx only" or "℞ only" may be used as provided under § 801.109(b)(1).

(ii) The use of symbols in device labeling which do not meet the requirements of paragraph (c)(1)(i) of this section renders a device misbranded under section 502(c) of the act.

(iii) For purposes of paragraph (c)(1)(i) of this section:

(A) An SDO is an organization that is nationally or internationally recognized and that follows a process for standard development that is transparent, (*i.e.*, open to public scrutiny), where the participation is balanced, where an appeals process is included, where the standard is not in conflict with any statute, regulation, or policy under which FDA operates, and where the standard is national or international in scope.

(B) The term "symbols glossary" means a compiled listing of:

(*1*) Each SDO-established symbol used in the labeling for the device;

(*2*) The title and designation number of the SDO-developed standard containing the symbol;

(*3*) The title of the symbol and its reference number, if any, in the standard; and

(*4*) The meaning or explanatory text for the symbol as provided in the FDA recognition or, if FDA has not recognized the standard or portion of the standard in which the symbol is located or the symbol is not used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition, the explanatory text as provided in the standard.

* * * * *

■ 11. Amend § 801.109 by revising paragraph (b)(1) to read as follows:

§ 801.109 Prescription devices.

* * * * *

(b) * * *

(1) The symbol statement "Rx only" or "℞ only" or the statement "Caution: Federal law restricts this device to sale by or on the order of a ______", the blank to be filled with the word "physician", "dentist", "veterinarian", or with the descriptive designation of any other practitioner licensed by the law of the State in which the practitioner practices to use or order the use of the device; and

* * * * *

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

■ 12. The authority citation for part 809 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 360b, 360c, 360d, 360h, 360i, 360j, 371, 372, 374, 381.

■ 13. In § 809.10:
■ a. Add a last sentence to paragraph (a)(4),
■ b. Add a last sentence to paragraph (b)(5)(ii), and
■ c. Add paragraph (g).

The additions read as follows:

§ 809.10 Labeling for in vitro diagnostic products.

(a) * * *

(4) * * * The limiting statement appropriate to the intended use of a prescription in vitro diagnostic product shall bear the symbol statement "Rx only" or "℞ only" or the statement "Caution: Federal law restricts this device to sale by or on the order of a ______", the blank to be filled with the word "physician", "dentist", "veterinarian", or with the descriptive designation of any other practitioner licensed by the law of the State in which the practitioner practices to use or order the use of the device.

* * * * *

(b) * * *

(5) * * *

(ii) * * * The limiting statement appropriate to the intended use of a prescription in vitro diagnostic product shall bear the symbol statement "Rx only" or "℞ only" or the statement "Caution: Federal law restricts this device to sale by or on the order of a ______", the blank to be filled with the word "physician", "dentist", "veterinarian", or with the descriptive designation of any other practitioner licensed by the law of the State in which the practitioner practices to use or order the use of the device.

* * * * *

(g)(1) The applicant may provide the labeling information referenced in this section in the form of:

(i) A symbol accompanied by explanatory text adjacent to the symbol;

(ii) A symbol not accompanied by adjacent explanatory text that:

(A) Is contained in a standard that FDA recognizes under its authority in section 514(c) of the act;

(B) Is used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition; and

(C) Is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used;

(iii) A symbol not accompanied by adjacent explanatory text that:

(A) Is established in a standard developed by a standards development organization (SDO);

(B) Is not contained in a standard that is recognized by FDA under its authority in section 514(c) of the act or is contained in a standard that is recognized by FDA but is not used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition;

(C) Is determined by the manufacturer to be likely to be read and understood by the ordinary individual under customary conditions of purchase and use in compliance with section 502(c) of the act;

(D) Is used according to the specifications for use of the symbol set forth in the SDO-developed standard; and

(E) Is explained in a paper or electronic symbols glossary that is included in the labeling for the device and the labeling on or within the package containing the device bears a prominent and conspicuous statement identifying the location of the symbols glossary that is written in English or, in the case of articles distributed solely in Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be used; or

(iv) The symbol statement "Rx only" or "℞ only" used as provided under paragraphs (a)(4) and (b)(5)(ii) of this section.

(2) The use of symbols in device labeling which do not meet the requirements of paragraph (g)(1) of this section renders a device misbranded under section 502(c) of the act.

(3) For purposes of paragraph (g)(1) of this section:

(i) An SDO is an organization that is nationally or internationally recognized and that follows a process for standard development that is transparent, (*i.e.*, open to public scrutiny), where the participation is balanced, where an appeals process is included, where the standard is not in conflict with any statute, regulation, or policy under which FDA operates, and where the standard is national or international in scope.

(ii) The term "symbols glossary" means a compiled listing of:

(A) Each SDO-established symbol used in the labeling for the device;

(B) The title and designation number of the SDO-developed standard containing the symbol;

(C) The title of the symbol and its reference number, if any, in the standard; and

(D) The meaning or explanatory text for the symbol as provided in the FDA recognition or, if FDA has not recognized the standard or portion of the standard in which the symbol is located or the symbol is not used according to the specifications for use of the symbol set forth in FDA's section 514(c) recognition, the explanatory text as provided in the standard.

Dated: June 8, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13989 Filed 6–14–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 28, 30, 87, 180, and 3282

[Docket No. FR–5942–I–01]

RIN 2501–AD79

Inflation Catch-Up Adjustment of Civil Monetary Penalty Amounts

AGENCY: Office of the General Counsel, HUD.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends HUD's civil monetary penalty regulations by making inflation adjustments as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. HUD also removes three obsolete civil monetary penalty regulations previously authorized under statutes for which either HUD no longer has enforcement authority or the program is no longer active. Lastly, HUD makes a technical change to the regulation language implementing the Program Fraud Civil Remedies Act which, due to a typographical error under the last civil money penalty adjustment, failed to include language assigning a penalty for causing a false claim or statement to be made.

DATES: *Effective date:* August 16, 2016. *Comment due date:* August 15, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this interim final rule. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dane Narode, Associate General Counsel, Office of Program Enforcement, Department of Housing and Urban Development, 1250 Maryland Avenue SW., Suite 200, Washington, DC 20024; telephone number 202–245–4141 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act requires agencies to: (1) Adjust the level of civil monetary penalties with an initial "catch-up" adjustment through an interim final rulemaking (IFR); and (2) make subsequent annual adjustments for inflation.

Previously, the Inflation Adjustment Act required agencies to adjust CMP levels every four years based on the percentage by which the Consumer Price Index (CPI) for the month of June of the prior calendar year exceeded the CPI for the month of June of the calendar year during which the last adjustment was made. The Inflation Adjustment Act also capped the increase for each adjustment at 10 percent and rounded the adjustment based on the size of the penalty (*e.g.,* multiple of $10 in the case of penalties less than or equal to $100). The rounding process meant that penalties would often not be increased at all if the inflation factor was not large enough. Furthermore, the cap on increases of 10 percent in tandem with the rounding meant that the formula over time caused penalties to lose value relative to total inflation. The 2015 Act updates these requirements by prescribing that agencies make annual adjustments for inflation based on the CPI for the month of October and round to the nearest dollar after an initial adjustment.

In order to eliminate the inconsistent changes caused by the prior method, the 2015 Act resets the inflation adjustment by excluding prior inflationary adjustments under the Inflation Adjustment Act, which contributed to a decline in the real value of penalty levels. To do this, the 2015 Act provides that the initial adjustment shall be the percentage by which the CPI for the month of October, 2015 exceeds that of the month of October of the calendar year during which the amount of the CMP was originally established or otherwise adjusted under a provision of law other than the Inflation Adjustment Act. While the 2015 Act does not provide a cap on adjustments going forward, the initial adjustment under the 2015 Act does limit large CMP increases by providing that no initial adjustments may exceed 150 percent of the amount of the CMP as of the date the 2015 Act was enacted, November 2, 2015. Lastly, the 2015 Act requires that agencies publish an interim final rule with the initial adjustment by July 1, 2016, and have the adjustments take effect no later than August 1, 2016. The initial adjustment under the 2015 Act also provides that, following public comment, the head of an agency may reduce the required increase if the agency head determines that the increase will have a negative economic impact or the social costs of the increase outweigh the benefits; and the Director of the Office of Management and Budget concurs.

II. This Interim Final Rule

A. Inflation Adjustment of Civil Monetary Penalty Amounts

For each component, HUD provides a table showing how the penalties are being increased pursuant to the 2015 Act. In the first column, HUD provides a description of the penalty. In the second column ("Citation,") HUD provides the United States Code (U.S.C.) statutory citation providing for the penalty. In the third column ("Original Amount"), HUD provides the amount of the penalty as originally enacted by Congress or changed through a mechanism other than pursuant to the Inflation Adjustment Act. In the fourth column ("Regulatory Citation"), HUD lists the regulatory citation in the current Code of Federal Regulations (CFR) where the most recently amended penalty is codified. In the fifth column ("Current Amount"), HUD lists the existing penalty in the CFR. In the sixth column, ("New Amount") HUD lists the penalty after disregarding adjustments under the Inflation Adjustment Act and applying the 2015 Act formula and cap for the first adjustment.

Description	Citation	Original amount	Regulatory citation	Current amount	New amount
False Claims & Statements.	Omnibus Budget Reconciliation Act of 1986 (31 U.S.C. 3802(a)(1)).	$5,000	§ 28.10	$8,500	$10,781.

Description	Citation	Original amount	Regulatory citation	Current amount	New amount
Advance Disclosure of Funding.	Department of Housing and Urban Development Act (42 U.S.C. 3537a(c)).	$10,000	§ 30.20	$16,000	$18,936.
Disclosure of Subsidy Layering.	Department of Housing and Urban Development Act (42 U.S.C. 3545(f)).	$10,000	§ 30.25	$16,000	$18,936.
FHA Mortgagees and Lenders Violations.	HUD Reform Act of 1989 (12 U.S.C. 1735f–14(a)(2)).	Per Violation: $5,000 Per Year: $1,000,000.	§ 30.35	Per Violation: $8,500 Per Year: $1,525,000.	Per Violation: $9,468 Per Year: $1,893,610.
Other FHA Participants Violations.	HUD Reform Act of 1989 (12 U.S.C. 1735f–14(a)(2)).	Per Violation: $5,000 Per Year: $1,000,000.	§ 30.36	Per Violation: $7,050 Per Year: $1,335,000.	Per Violation: $9,468 Per Year: $1,893,610.
Indian Loan Mortgagees Violations.	Housing Community Development Act of 1992[1] (12 U.S.C. 1715z–13a(g)(2)).	Per Violation: $5,000 Per Year: $1,000,000.	§ 30.40	Per Violation: $8,000 Per Year: $1,525,000.	Per Violation: $9,468 Per Year: $1,893,610.
Multifamily & Section 202 or 811 Owners Violations.	HUD Reform Act of 1989 (12 U.S.C. 1735f–15(c)(2)).	$25,000	§ 30.45	$42,500	$47,340.
Ginnie Mae Issuers & Custodians Violations.	HUD Reform Act of 1989 (12 U.S.C. 1723i(b)).	Per Violation: $5,000 Per Year: $1,000,000.	§ 30.50	Per Violation: $8,500 Per Year: $1,525,000.	Per Violation: $9,468 Per Year: $1,893,610.
Title I Broker & Dealers Violations.	HUD Reform Act of 1989 (12 U.S.C. 1703).	Per Violation: $5,000 Per Year: $1,000,000.	§ 30.60	Per Violation: $8,500 Per Year: $1,525,000.	Per Violation: $9,468 Per Year: $1,893,610.
Lead Disclosure Violation.	Title X-Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d(b)(1)).	$10,000	§ 30.65	$16,000	$16,773.
Section 8 Owners Violations.	Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437z–1(b)(2)).	$25,000	§ 30.68	$27,500	$36,794.
Lobbying Violation ..	The Lobbying Disclosure Act of 1995 (31 U.S.C. 1352).	Min: $10,000 Max: $100,000.	§ 87.400	Min: $10,000 Max: $100,000.	Min: $18,936 Max: $189,361.
Fair Housing Act Civil Penalties.	Fair Housing Amendments Act of 1988 (42 U.S.C. 3612(g)(3)).	No Priors: $10,000 One Prior: $25,000 Two or More Priors: $50,000.	§ 180.671(a)	No Priors: $16,000 One Prior: $42,500 Two or More Priors: $70,000.	No Priors: $19,787 One Prior: $49,467 Two or More Priors: $98,935.
Manufactured Housing Regulations Violation.	Housing Community Development Act of 1974 (42 U.S.C. 5410).	Per Violation: $1,000 Per Year: $1,000,000.	§ 3282.10	Per Violation: $1,100 Per Year: $1,375,000.	Per Violation: $2,750 Per Year: $3,437,500.

B. Correction to 24 CFR 28.10

In addition to applying the catch-up adjustment as required by the 2015 Act, HUD takes the opportunity to issue a technical correction to § 28.10. On January 18, 2013, HUD published a final rule (78 FR 4059) to apply a routine inflationary adjustment to CMPs under § 28.10, the regulation implementing the Program Fraud Civil Remedies Act, 31 U.S.C. 3802. Due to a typographical error, the final rule assigned a penalty for making a false claim or statement, but not for causing such claim or statement to be made. Liability is provided for both bases under 31 U.S.C. 3802, as well as under the version of § 28.10 that predated the 2013 rulemaking (*See* 73 FR 76831, Dec. 17, 2008), and the 2013 final rule was intended only to adjust the penalty amount, not to remove a basis for liability. As such, the bases for liability enumerated in § 28.10 are incomplete. Through this technical correction, HUD can ensure § 28.10 fully implements the statutory requirements of 31 U.S.C. 3802. Accordingly, HUD amends §§ 28.10(a), (b), and (c) to reflect statutory liability for causing a false claim or statement to be made, as originally intended.

C. Removal of 24 CFR 30.30, 30.55, and 30.69

HUD also takes the opportunity to remove from title 24 of the CFR two outdated regulations for which HUD no longer has statutory enforcement authority, and one regulation for which the HUD program was repealed.

Section 30.30 implements CMPs for violations under the Urban Homesteading Program, which was administered by HUD's Office of Community Planning and Development and ceased operation due to repeal of 12 U.S.C. 1706e on October 1, 1991. Subsequently, HUD removed its Urban Homesteading regulation at 24 CFR part 590 (79 FR 51894, Sept. 2, 2014) but inadvertently retained § 30.30, which is now obsolete.

Sections 30.55 and 30.69 implement CMPs for violations under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) (12 U.S.C. 5101 *et seq.*) and the Interstate Land Sales Full Disclosure Act (ILSFDA) (15 U.S.C. 1701 *et seq.*), respectively. In 2011, the Dodd-Frank Act[2] transferred from HUD to the Consumer Financial Protection Bureau (CFPB) all of its prior authority to administer, enforce, and otherwise implement the SAFE Act and ILSFDA. Accordingly, HUD issued regulations removing 24 CFR part 3400, its SAFE Act regulation (79 FR 34225, June 16, 2014), and removed 24 CFR parts 1710, 1715, and 1720, its ILSFDA regulations (79 FR 34225, June 16, 2014). Subsequently, CFPB issued its own regulations for these statutes.[3] In the process of updating its regulations, HUD inadvertently retained §§ 30.55 and 30.69, which are now obsolete.

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[1] The Housing Community Development Act of 1992 (12 U.S.C. 1715z–13a(g)(2) incorporated the civil money penalties from section 536 of the HUD Reform Act of 1989 (12 U.S.C. 1715f–14), and thus the year applied for purposes of the 2015 Act adjustment is 1989.

[2] Public Law 111–203, 124 Stat. 1376, approved July 21, 2010.

[3] *See* 12 CFR parts 1007 and 1008 for the SAFE Act, and 12 CFR part 1024 for ILSFDA.

HUD is now removing §§ 30.30, 30.55, and 30.69 from title 24 of the CFR, as originally intended. The removal of these regulations will streamline HUD's regulations and eliminate confusion regarding the status of these programs.

II. Justification for Interim Final Rulemaking

HUD generally publishes rules for advance public comment in accordance with its rule on rulemaking at 24 CFR part 10. However, under 24 CFR 10.1, HUD may omit prior public notice and comment if it is "impracticable, unnecessary, or contrary to the public interest." In this instance, HUD has determined that it is unnecessary to delay the effectiveness of this rule for advance public comment.

This interim final rule follows the statutory directive in the 2015 Act requiring a catch-up adjustment to HUD's CMPs by applying the adjustment formula established in the statute and publishing an interim final rule. Accordingly, because calculation of the adjustment is formula-driven, HUD has limited discretion in updating its regulations to reflect the new penalty levels derived from application of the formula. HUD emphasizes that this rule addresses only the matter of the calculation of the maximum civil monetary penalties for the respective violations described in the regulations. This rule does not address the issue of the Secretary's discretion to impose or not to impose a penalty, nor the procedures that HUD must follow in initiating a civil monetary penalty action, or in seeking a civil penalty in a Fair Housing Act case.

III. Effective Date

Section 7 of the Department of Housing and Urban Development Act, 42 U.S.C. 3535, paragraph (o), requires that "any regulation implementing any provision of the Department of Housing and Urban Development Reform Act of 1989 that authorizes the imposition of a civil money penalty may not become effective until after the expiration of a public comment period of not less than 60 days." Therefore, HUD delays the effective date to August 16, 2016, which provides for the required 60 days of public comment and compliance with the 2015 Act's statutory deadline of August 1, 2016. These new penalties apply to violations occurring after August 16, 2016.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. As discussed above in this preamble, this interim final rule revises the civil monetary penalty regulations to make inflation adjustments required by the 2015 Act. It also provides a technical correction to 24 CFR part 28 to harmonize it with its authorizing statute and removes obsolete rules from the Code of Federal Regulations. This interim final rule is consistent with the goals of Executive Order 13563, to reduce regulatory burdens by modifying and removing ineffective or outmoded regulations.

As a result of this review, OMB determined that this rule was not significant under Executive Order 12866 and Executive Order 13563.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD has determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

Unfunded Mandates Reform

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA)[4] requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of UMRA also requires an agency to identity and consider a reasonable number of regulatory alternatives before promulgating a rule.[5] However, the UMRA applies only to rules for which an agency publishes a general notice of proposed rulemaking. As discussed above, HUD has determined, for good cause, that prior notice and public comment is not required on this rule and, therefore, the UMRA does not apply to this interim final rule.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Review

This interim final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

List of Subjects

24 CFR Part 28

Administrative practice and procedure, Claims, Fraud, Penalties.

24 CFR Part 30

Administrative practice and procedure, Grant programs—housing and community development, Loan programs—housing and community development, Mortgage insurance, Penalties.

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[4] 2 U.S.C. 1532.

[5] 2 U.S.C. 1534.

24 CFR Part 87

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Manufactured homes, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 28, 30, 87, 180, and 3282 as follows:

PART 28—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

■ 1. The authority citation for part 28 is revised to read as follows:

Authority: 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812; 42 U.S.C. 3535(d).

■ 2. In § 28.10, revise paragraphs (a)(1) introductory text and (b)(1) introductory text and the first sentence in paragraph (c) to read as follows:

§ 28.10 Basis for civil penalties and assessments.

(a) * * *

(1) A civil penalty of not more than $10,781 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know:

* * * * *

(b) * * *

(1) A civil penalty of not more than $10,781 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that:

* * * * *

(c) *Limit on liability.* If the claim or statement relates to low-income housing benefits or housing benefits for the elderly or handicapped, then a person may be held liable only if he or she has made or caused to be made the claim or statement in the course of applying for such benefits, with respect to his or her eligibility, or family's eligibility, to receive such benefits. * * *

* * * * *

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

■ 3. The authority citation for part 30 is revised to read as follows:

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, and 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 1 note and 2461 note; 42 U.S.C. 1437z–1 and 3535(d).

■ 4. In § 30.20, revise paragraph (b) to read as follows:

§ 30.20 Ethical violations by HUD employees.

* * * * *

(b) *Maximum penalty.* The maximum penalty is $18,936 for each violation.

■ 5. In § 30.25, revise paragraph (b) to read as follows:

§ 30.25 Violations by applicants for assistance.

* * * * *

(b) Maximum penalty. The maximum penalty is $18,936 for each violation.

§ 30.30 [Removed]

■ 6. Remove § 30.30.

■ 7. In § 30.35, revise the first sentence in paragraph (c)(1) to read as follows:

§ 30.35 Mortgagees and lenders.

* * * * *

(c)(1) *Amount of penalty.* The maximum penalty is $9,468 for each violation, up to a limit of $1,893,610 for all violations committed during any one-year period. * * *

* * * * *

■ 8. In § 30.36, revise the first sentence in paragraph (c) to read as follows:

§ 30.36 Other participants in FHA programs.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $9,468 for each violation, up to a limit of $1,893,610 for all violations committed during any one-year period. * * *

■ 9. In § 30.40, revise the first sentence in paragraph (c) to read as follows:

§ 30.40 Loan guarantees for Indian housing.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $9,468 for each violation, up to a limit of $1,893,610 for all violations committed during any one-year period. * * *

■ 10. In § 30.45, revise paragraph (g) to read as follows:

§ 30.45 Multifamily and section 202 or 811 mortgagors.

* * * * *

(g) *Maximum penalty.* The maximum penalty for each violation under paragraphs (c) and (f) of this section is $47,340.

* * * * *

■ 11. In § 30.50, revise the first sentence in paragraph (c) to read as follows:

§ 30.50 GNMA issuers and custodians.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $9,468 for each violation, up to a limit of $1,893,610 during any one-year period. * * *

§ 30.55 [Removed]

■ 12. Remove § 30.55.

■ 13. In § 30.60, revise paragraph (c) to read as follows:

§ 30.60 Dealers or sponsored third-party originators.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $9,468 for each violation, up to a limit for any particular person of $1,893,610 during any one-year period.

■ 14. In § 30.65, revise paragraph (b) to read as follows:

§ 30.65 Failure to disclose lead-based paint hazards.

* * * * *

(b) *Amount of penalty.* The maximum penalty is $16,773 for each violation.

■ 15. In § 30.68, revise paragraph (c) to read as follows:

§ 30.68 Section 8 owners.

* * * * *

(c) *Maximum penalty.* The maximum penalty for each violation under this section is $36,794.

* * * * *

§ 30.69 [Removed]

■ 16. Remove § 30.69.

PART 87—NEW RESTRICTIONS ON LOBBYING

■ 17. The authority citation for part 87 is revised to read as follows:

Authority: 28 U.S.C. 1 note; 31 U.S.C. 1352; 42 U.S.C. 3535(d).

■ 18. In § 87.400, revise paragraphs (a), (b), and (e) to read as follows:

§ 87.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $18,936 and not more than $189,361 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $18,936 and not more than $189,361 for each such failure.

* * * * *

(e) First offenders under paragraph (a) or (b) of this section shall be subject to a civil penalty of $18,936, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $18,936 and $189,361, as determined by the agency head or his or her designee.

* * * * *

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

■ 19. The authority citation for part 180 is revised to read as follows:

Authority: 28 U.S.C. 1 note; 29 U.S.C. 794; 42 U.S.C. 2000d–1, 3535(d), 3601–3619, 5301–5320, and 6103.

■ 20. In § 180.671, revise paragraphs (a)(1) through (3) to read as follows:

§ 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) * * *

(1) $19,787, if the respondent has not been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act or any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local governmental agency, to have committed any prior discriminatory housing practice.

(2) $49,467, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the 5-year period preceding the date of filing of the charge.

(3) $98,935, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the 7-year period preceding the date of filing of the charge.

* * * * *

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

■ 21. The authority citation for part 3282 is revised to read as follows:

Authority: 28 U.S.C. 1 note; 28 U.S.C. 2461 note; 42 U.S.C. 3535(d) and 5424.

■ 22. Revise § 3282.10 to read as follows:

§ 3282.10 Civil and criminal penalties.

Failure to comply with these regulations may subject the party in question to the civil and criminal penalties provided for in section 611 of the Act, 42 U.S.C. 5410. The maximum amount of penalties imposed under section 611 of the Act shall be $2,750 for each violation, up to a maximum of $3,437,500 for any related series of violations occurring within one year from the date of the first violation.

Dated: May 20, 2016.

Helen R. Kanovsky,

General Counsel.

[FR Doc. 2016–14060 Filed 6–14–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF JUSTICE

28 CFR Part 104

[Docket No. CIV 151]

RIN 1105–AB49

James Zadroga 9/11 Victim Compensation Fund Reauthorization Act

AGENCY: Department of Justice.

ACTION: Interim final rule.

SUMMARY: On December 18, 2015, President Obama signed into law the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act (the "Reauthorized Zadroga Act"). The Act extends the September 11th Victim Compensation Fund of 2001 which provides compensation to any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001, or the rescue and recovery efforts during the immediate aftermath of such crashes or the debris removal efforts that took place in the immediate aftermath of those crashes. Special Master Sheila L. Birnbaum, appointed by the Attorney General to administer the Fund, is issuing this Interim Final Rule to address changes required by the Reauthorized Zadroga Act. Specifically, the statute extends the time period during which eligible claimants may submit claims for compensation until December 18, 2020, increases the Victim Compensation Fund's total funding available to pay claims, creates different categories of claims, directs the Victim Compensation Fund to issue full compensation to eligible claimants and imposes limitations on certain components of future loss calculations.

DATES: *Effective date:* This rule is effective June 15, 2016. *Comment date:* Written comments must be submitted on or before July 15, 2016. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until midnight Eastern Time at the end of that day.

ADDRESSES: Please address all comments regarding this rule by U.S. mail to: Jordana Feldman, September 11th Victim Compensation Fund, Civil Division, U.S. Department of Justice, 290 Broadway, Suite 1300, New York, New York 10007. To ensure proper handling, please reference CIV Docket No. 151 on your correspondence. Comments may also be sent electronically through *http://regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://regulations.gov* Web site. The Civil Division will accept attachments to electronic comments in Microsoft Word, WordPerfect, or Adobe PDF formats only.

FOR FURTHER INFORMATION CONTACT: Catherine V. Emerson, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue NW., Washington, DC 20530, telephone 855–885–1555 (TTY 855–885–1558).

SUPPLEMENTARY INFORMATION:

Public Comments

The Department is publishing this interim final rule, effective on June 15, 2016, the statutory deadline for updating the existing regulations in light of the statutory changes made by the Reauthorized Zadroga Act.

The Department is providing a 30-day period for public comment. The regulatory text of this rule is restating all of the provisions of 28 CFR part 104, as revised, for ease of reference and application for the filing of claims. Commenters should be aware, though, that only certain portions of the existing regulations are being revised at this time, and the Department is only soliciting public comments on the changes being made from the existing text of the regulations in 28 CFR part 104. These changes are clearly indicated in a redlined/strikeout version of the regulatory text that is included at *www.regulations.gov* and is available at *www.vcf.gov* or by calling 855–885–1555 (TTY 855–885–1558). Accordingly, public comments will be considered only with respect to the revisions made by the interim final rule and not as to provisions of the regulations that were already in effect prior to enactment of the Reauthorized Zadroga Act.

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Information made available for public inspection includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want the agency to redact. Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online.

If you wish to submit confidential business information as part of your comment but do not wish it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the agency may choose not to post that comment (or to only partially post that comment) on *http://www.regulations.gov.* Confidential business information identified and located as set forth above will not be placed in the public docket file, nor will it be posted online.

If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

Pursuant to Title IV of Public Law 107–42 ("Air Transportation Safety and System Stabilization Act") (2001 Act), the September 11th Victim Compensation Fund of 2001 was open for claims from December 21, 2001, through December 22, 2003. The Fund provided compensation to eligible individuals who were physically injured as a result of the terrorist-related aircraft crashes of September 11, 2001, and to personal representatives of those who died as a result of the crashes.

Special Master Kenneth R. Feinberg was appointed by the Attorney General to administer the Fund. The Fund was governed by Interim Final Regulations issued on December 21, 2001, *see* 66 FR 66274, and by Final Regulations issued on March 13, 2002, *see* 67 FR 11233. During its two years of operation, the Fund distributed over $7.049 billion to survivors of 2,880 persons killed in the September 11th attacks and to 2,680 individuals who were injured in the attacks or in the rescue efforts conducted thereafter. In 2004, Special Master Feinberg issued a report describing how the fund was administered. *See* Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001.

On January 2, 2011, President Obama signed Public Law 111–347, the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act) Public Law 114–113, Div. O, Title IV, into law. Title I of the Zadroga Act established a program within the Department of Health and Human Services to provide medical monitoring and treatment benefits to eligible individuals. Title II amended the 2001 Act and reopened the Fund. Among other changes, Title II added new categories of beneficiaries for the Fund and set new filing deadlines. It also imposed a cap on the total awards that can be paid by the Fund and limited the fees that an attorney may receive for awards made under the Fund.

The Zadroga Act did not appropriate administrative funds for the Fund to begin taking and processing claims. On April 15, 2011, President Obama signed into law Public Law 112–10, the continuing budget resolution for 2011, which permits the Fund to draw on the money originally allocated in the Zadroga Act in order to pay for its administrative expenses, beginning on October 1, 2011.

The Attorney General appointed Sheila L. Birnbaum to serve as Special Master and to administer the Fund. On June 21, 2011, the Special Master issued the Notice of Proposed Rulemaking, which provided for a 45-day public comment period. On August 26, 2011, after evaluating the comments received, the Special Master signed the Final Rule, and on August 31, 2011, the Final Rule was published in the **Federal Register**. *See* 76 FR 54112.

On December 18, 2015, President Obama signed into law Public Law 114–113, providing for the reauthorization of the Zadroga Act. The Reauthorized Zadroga Act extends the time period during which eligible claimants may submit claims, increases the Victim Compensation Fund's total funding available to pay claims, creates different categories of claims, directs the Victim Compensation Fund to issue full compensation to eligible claimants and instructs the Victim Compensation Fund to implement certain changes to the policies and procedures used to evaluate and process claims.

This Interim Final Rule addresses those changes mandated by the statute. In accordance with the rulemaking process, this Interim Final Rule is effective on June 15, 2016. Once the rule is published in the **Federal Register**, there will be a 30-day public comment period. After that period, the Special Master will review and evaluate any comments and will publish a final rule with any clarifications or amendments deemed appropriate.

A. Summary of Key Statutory Changes

The Reauthorized Zadroga Act makes several changes to the Zadroga Act, including the following: The statute extends the deadline for filing claims; adds or changes certain eligibility definitions; establishes different categories of claims based on timing of the issuance of a letter setting forth the total amount of compensation to which a claimant is entitled; changes certain policies and procedures for evaluating claims and computing losses; removes a category of losses previously compensable by the Fund; requires that the amount of compensation to which a claimant is entitled not exceed the collateral source compensation that the claimant has received or is entitled to receive; increases the amount of funding available to pay claims and administrative costs and accelerates of the availability of funding; and directs the Fund to perform an annual reassessment of policies and procedures.

Specifically, the statute:

- Extends the deadline for filing a claim from the original deadline of October 3, 2016 to the new deadline of December 18, 2020;
- Codifies the definition of "9/11 crash site" to reflect the definition of the

New York City exposure zone provided in the 2011 regulations;

- Adds new definitions regarding the types of conditions covered by referencing WTC-related health conditions as defined by Section 3312(a) and 3322(b) of the Public Health Service Act (42 U.S.C. 300mm–22 and 300mm–32) and specifically excluding mental health conditions;
- Establishes two categories of claims—Group A and Group B—based on the date the Special Master "postmarks and transmits" a final award determination to the claimant;
- Imposes caps on the amount of non-economic loss that can be computed for different types of conditions (categorized as cancer and non-cancer);
- Imposes a $200,000 cap on the annual gross income, as defined in Section 61 of the Internal Revenue Code, used to determine economic loss;
- Directs the Victim Compensation Fund to prioritize the compensation of claims that present the most debilitating physical conditions;
- Eliminates "future medical expense loss" as a compensable economic loss;
- Eliminates any minimum award to the extent that collateral source offsets exceed the amount of compensation;
- Makes the original $2,775,000,000 appropriation available immediately to pay claims. Previously, only $875,000,000 of this amount was available through October 3, 2016. It also provides an additional $4,600,000,000 in funding that becomes available in October 2016; and
- Directs the Special Master to conduct an annual reassessment of policies and procedures.

B. Revisions to the Rule Conforming to Statutory Changes

These interim final regulations amend the Department of Justice's August 2011 final regulations in order to reflect changes required by the Reauthorized Zadroga Act. Specifically:

- Section 104.2 Eligibility definitions and requirements is revised to include the definition of "Group A claims" and "Group B claims." It also includes the definition of a "WTC-Related Physical Health Condition", and makes clear that mental health conditions are not covered. This section also reflects the codification of the prior regulations in terms of one of the definitions of the "9/11 crash site"—the definition of the New York City exposure zone.
- Section 104.41 Amount of compensation is revised to reflect the statutory mandate that no Group B claim shall receive compensation greater than the amount of loss determined less the amount of any collateral source compensation that the claimant has received or is entitled to receive, thus eliminating the $10,000 minimum award that the Fund issued for Group A claims in the event that collateral offsets exceeded losses.
- Section 104.43 Determination of presumed economic loss for decedents is revised to account for the $200,000 annual gross income cap and the elimination of future medical expenses loss as a compensable loss.
- Section 104.44 Determination of presumed economic loss for injured claimants is revised to account for the $200,000 annual gross income cap and the elimination of future medical expenses loss as a compensable loss.
- Section 104.46 Determination of presumed noneconomic losses for injured claimants is revised to reflect the noneconomic loss cap of $250,000 for any single type of cancer and a noneconomic loss cap of $90,000 for any single type of non-cancer condition
- Section 104.51 Payments to eligible individuals is revised to reflect the amount and timing of availability of funding to pay claims and administrative costs: The $2,755,000,000 previously appropriated over time to be made immediately available and paid as soon as practicable and an additional $4,600,000,000 to be available in October 2016. The section also reflects the directive to the Special Master to prioritize the compensation of claims that present the most debilitating physical conditions. The section further addresses the statutory mandate to conduct an annual reassessment of policies and procedures and make adjustments as necessary to ensure that total expenditures do not exceed available funds.
- Section 104.62 Time limit on filing claims is revised to reflect the extended statutory deadline for filing claims, from October 3, 2016 to December 18, 2020.

C. Additional Regulatory Changes To Reduce Burdens for Claimants

This rule includes four additional regulatory changes, not required by the statute. All of these changes are designed to benefit claimants or reduce claimant burden.

First, in section 104.3(c)(3), the definition of "spouse" has been expanded. Under the previous definition, the Special Master was required to identify the spouse of the deceased victim as the person who was reported or who legally could have been identified as the spouse on the victim's Federal tax return for the year prior to the year of the victim's death. The previous definition included two exceptions: (1) If the victim was married or divorced in accordance with applicable state law on or after January 1 of the year of the victim's death; or (2) If the victim was not required by law to file a Federal tax return for the year prior to the year of the victim's death. The updated regulations expand this definition to include a third exception: If the victim had a same-sex spouse who was lawfully married to the victim under applicable state law. The 2011 regulations were published when Section 3 of the Defense of Marriage Act was in effect, prohibiting the Federal government from recognizing same-sex marriages. As such, same-sex married couples could not identify themselves as married on their tax returns. Since that time, that section was held to be unconstitutional. These updated regulations reflect the changed law. They also reflect the Fund's policy to treat a same-sex spouse who was legally married to the victim under applicable state law as a spouse for purposes of this program.

Second, section 104.22(c)(1) has been revised to remove the requirement that all claimants shall, at a minimum, submit all tax returns that were filed for the period beginning three years prior to the year of death or discovery of the injury and ending with the year the claim was filed or the year of death. Over the course of the program, the Special Master has found that this requirement can be burdensome in some cases where the tax returns are not necessary for determination. The Special Master retains the discretion to require the submission of tax returns where necessary for evaluation of the claim. For example, the Special Master may require the submission of tax returns where a claimant is seeking loss of self-employment income or loss of partnership income, or in order to evaluate whether an individual was identified on a deceased victim's Federal tax return for the year prior to the year of the victim's death. Accordingly, the updated regulations allow the Special Master discretion to determine whether and to what extent tax returns should be submitted for a particular claimant.

Third, section 104.45(e) has been added as a new paragraph to address the determination of noneconomic losses for claimants who have a WTC-Related Physical Condition and who are found eligible for economic loss. The Reauthorized Zadroga Act imposes caps on the amount of noneconomic loss for an eligible cancer ($250,000) and an eligible non-cancer condition ($90,000). The revised regulations clarify that the

Special Master shall determine the appropriate noneconomic loss for economic loss claims in the same manner that she determines noneconomic loss only claims, *see* section 104.46, taking into account the extent of disability and the fact that different eligible conditions may contribute to the disability.

The regulations further make clear in section 104.46 that the Reauthorized Zadroga Act does not place an aggregate cap on noneconomic loss but merely states that the loss for any type of cancer shall not exceed $250,000 and the loss for any type of non-cancer shall not exceed $90,000. A noneconomic loss may result from both a cancer and non-cancer condition and/or may result from more than one type of cancer. The revised regulations provide that the Special Master has discretion to consider the effect of multiple cancer conditions or multiple cancer and non-cancer conditions in computing the total noneconomic loss in such claims.

Fourth, section 104.52 has been revised to remove the requirement that, for a claim filed by a Personal Representative on behalf of a deceased victim, the Personal Representative shall submit a plan of distribution for any award received from the Fund before the payment is authorized. Because the Personal Representative has an independent fiduciary obligation to distribute the award in accordance with applicable state law or court order, this documentation may not be needed in every case. Therefore, the revised regulations allow the Special Master discretion to determine whether a distribution plan is required prior to authorizing the payment authorization on a particular claim.

Regulatory Certifications

Administrative Procedure Act

The Department's implementation of this rule as an interim final rule, with provision for post-promulgation public comment, is based on Sections 553(b)(A), 553(b)(B) and 553(d) of the Administrative Procedure Act. 5 U.S.C. 553. Under Section 553(b), an agency may issue a rule without notice of proposed rulemaking and the pre-promulgation opportunity for public comment where "good cause" exists or for "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice."

The revisions made by this interim final rule fit within the exceptions to the requirement for pre-promulgation opportunity for notice and comment set out in Section 553. *See* 5 U.S.C. 553(b)(A). All of the revisions identified in Part B above, "Revisions to the Rule Conforming to Statutory Changes" are interpretive rules issued by the Department to advise the public of the Department's construction of the new statute. These revisions to the rule merely explain or clarify the application of the substantive law set forth in the Reauthorized Zadroga Act; they do not create new rights or impose obligations independent of the statute. As noted, the Reauthorized Zadroga Act requires revisions to the implementing regulations including extending the deadline for filing claims, defining different categories of claims (Group A and Group B), changing certain policies and procedures for evaluating claims and computing compensable losses and increasing the funding available to pay claims, among other things. The interim final rule merely incorporates those changes and explains certain provisions in more detail, such as those relating to the filing and evaluation of claims and computation of losses for claims defined as Group B under the statute.

The four additional changes, described in Part C, "Additional Regulatory Changes to Reduce Burdens for Claimants," similarly are not subject to formal notice-and-comment requirements. The first change, to section 104.3(c)(3) is interpretive and clarifies the meaning of the term "spouse" consistent with law and pre-existing Department policy. The second and fourth changes, which eliminate certain documentation requirements, see sections 104.22(c)(1) and 104.52, are procedural in nature; they eliminate a required component of the documentation submitted with a claim and instead advise that the Special Master retains the discretion to ask for these documents if needed. Finally, the addition of section 104.45(e) and the revisions of section 104.46 reflect general statements of policy; they serve only to advise the public that the Special Master may exercise her discretionary power in certain ways. For these reasons, the interim final rule is not subject to the formal notice-and-comment requirements under Section 553 of the APA.

Furthermore, an agency may find good cause to exempt a rule from provisions of the APA if it is determined that those procedures are impracticable, unnecessary, or contrary to the public interest. (5 U.S.C. 553(b)(B)). The Department finds that it is unnecessary and contrary to the public interest to seek public comment prior to promulgating this interim final rule for several reasons. First, delaying the implementation of the rule would delay the determination and payment of appropriate compensation for eligible Group B claims. Compensation determinations and corresponding payments will not be issued until the rule is effective. Thus, eligible claimants, particularly those suffering from terminal illness or extreme financial hardship, would be harmed by any delay. Second, the regulations that the interim final rule modifies were enacted pursuant to notice and comment rulemaking and to a large extent reflect changes recently mandated by statute. As previously discussed, the changes made by this interim final rule that are not mandated by the Reauthorized Zadroga Act reduce certain regulatory burdens on claimants or otherwise benefit the claimant by alleviating unnecessary document submission requirements and asserting the Special Master's discretion to prioritize the compensation of claims based on indicators that demonstrate severity of the claimant's eligible conditions. Third, the interim rule will be subject to public comment before its final implementation. The Department will consider any public comments made following publication of this interim final rule and make any appropriate adjustments or clarifications in the final rule. Finally, the deadline imposed by Congress to implement the regulations is exceedingly strict and therefore the Department has a limited period of time within which to update the regulations.

The APA also permits an agency to make a rule effective upon date of publication in the **Federal Register** where "good cause" exists or for "interpretive rules and statements of policy." 5 U.S.C. 553(d). As stated, the Department has determined that it would be unnecessary and contrary to the public interest to engage in full notice and comment rulemaking before putting these interim final regulations into effect, and that it is in the public interest to promulgate interim final regulations. For the same reasons, the Department has determined that there is good cause to make these interim final regulations effective immediately upon publication in the **Federal Register**, in accordance with Section 553(d) of the APA (5 U.S.C. 553(d)). Therefore, waiver of the 30-day period prior to the rule's effective date is appropriate here. The Department welcomes public comments on the changes being made by this interim final rule, and will carefully review any comments to ensure that any substantive concerns or issues regarding these changes are addressed in the final rule.

Paperwork Reduction Act of 1995

This rule implements Public Law 114–113 which reauthorizes the September 11th Victim Compensation Fund of 2001. In order to be able to evaluate claims and provide compensation, the Fund will need to collect information from an individual (or a personal representatives of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001 or the debris removal efforts that took place in the immediate aftermath of those crashes. Accordingly, the Department of Justice, Civil Division will submit an information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. This request will seek reinstatement of the prior information collection authorized under Public Law 111–347. The Department has also published a Notice in the **Federal Register** soliciting public comment on the information collection associated with this rulemaking. 81 FR 20674 (April 8, 2016).

Regulatory Flexibility Act

These regulations set forth procedures by which the Federal government will award compensation benefits to eligible victims of the September 11, 2001 terrorist attacks. Under 5 U.S.C. 601(6), the term "small entity" does not include the Federal government, the party charged with incurring the costs attendant to the implementation and administration of the Victim Compensation Fund. Because this rule is being adopted as an interim final rule, a Regulatory Flexibility analysis is not required. This rule provides compensation to individuals, not to entities.

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), Principles of Regulation and in accordance with Executive Order 13563 "Improving Regulation and Regulatory Review" section 1(b) General Principles of Regulation. The Department of Justice has determined that this rule is an "economically significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget. Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits. As is described more fully in the next paragraph, the economic impact of the rule is a transfer of the funds that are being allocated by the Federal government to any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001, or the rescue and recovery efforts during the immediate aftermath of such crashes or the debris removal efforts that took place in the immediate aftermath of those crashes.

Assessment of Benefits, Costs, and Alternatives

As required by Executive Order 13563 and Executive Order 12866 for economically significant regulatory actions, the Department has assessed the benefits and costs anticipated from this rulemaking and considered whether there are reasonably feasible alternatives to this rulemaking, including considering whether there are reasonably viable non-regulatory actions that could be taken in lieu of this rulemaking. The purpose of this rulemaking is to provide the legal and administrative framework necessary to provide compensation to any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001 or the debris removal efforts that took place in the immediate aftermath of those crashes, as provided by Title II of the Zadroga Act and the Reauthorized Zadroga Act. The primary benefits and costs of this rulemaking are both set by statute as Congress has appropriated a capped amount for this program—an initial $2.775 billion payable under the Zadroga Act and an additional $4.6 billion under the Reauthorized Zadroga Act. Because the $7.375 billion appropriated by Congress for the Fund must pay for claimant awards as well as the Fund's administrative expenses, it is important for the Fund to establish procedures to screen out ineligible or inappropriate claims while keeping administrative expenses as low as possible consistent with the goal of ensuring that funds are not diverted to processing ineligible claims in order to maximize the amount of funds available for claimants. Finally, based on past practice with the operation of the original Fund and the reopened Fund and the necessity to establish the legal and administrative framework for the reauthorized Fund, the Department concludes that there are no viable non-regulatory actions that it could take to implement the Reauthorized Zadroga Act in a fair and efficient manner.

Time Period for Public Comment

This interim final rule provides for a 30-day public comment period after publication. The rule is an interpretive rule that merely clarifies or explains the statute or that sets out procedural rules or general statements of policy. Therefore, an extended period of public comment is not necessary. A 30-day comment period will afford the public a meaningful opportunity to comment on the interim final rule.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. However, the Department of Justice has worked cooperatively with state and local officials in the affected communities in the preparation of this rule. Also, the Department individually notified national associations representing elected officials regarding this rulemaking.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 104

Disaster assistance, Disability benefits, Terrorism.

■ Accordingly, for the reasons set forth in the preamble, chapter I of Title 28 of the Code of Federal Regulations is amended by revising part 104 to read as follows:

PART 104—SEPTEMBER 11TH VICTIM COMPENSATION FUND

Subpart A—General; Eligibility

Sec.
104.1 Purpose.
104.2 Eligibility definitions and requirements.
104.3 Other definitions.
104.4 Personal Representative.
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Subpart B—Filing for Compensation

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Subpart C—Claim Intake, Assistance, and Review Procedures

104.31 Procedure for claims evaluation.
104.32 Eligibility review.
104.33 Hearing.
104.34 Publication of awards.
104.35 Claims deemed abandoned by claimants.

Subpart D—Amount of Compensation for Eligible Claimants

104.41 Amount of compensation.
104.42 Applicable state law.
104.43 Determination of presumed economic loss for decedents.
104.44 Determination of presumed noneconomic losses for claims on behalf of decedents.
104.45 Determination of presumed economic loss for injured claimants.
104.46 Determination of presumed noneconomic losses for injured claimants.
104.47 Collateral sources.

Subpart E—Payment of Claims

104.51 Payments to eligible individuals.
104.52 Distribution of award to decedent's beneficiaries.

Subpart F—Limitations

104.61 Limitation on civil actions.
104.62 Time limit on filing claims.
104.63 Subrogation.

Subpart G—Measures To Protect the Integrity of the Compensation Program

104.71 Procedures to prevent and detect fraud.

Subpart H—Attorney Fees

104.81 Limitation on attorney fees.

Authority: Title IV of Pub. L. 107–42, 115 Stat. 230, 49 U.S.C. 40101 note; Title II of Pub. L. 111–347, 124 Stat. 3623; Title IV of Pub. L. 114–113, 129 Stat. 2242.

Subpart A—General; Eligibility

§ 104.1 Purpose.

This part implements the provisions of the September 11th Victim Compensation Fund of 2001, Title IV of Public Law 107–42, 115 Stat. 230 (Air Transportation Safety and System Stabilization Act), as amended by the James Zadroga 9/11 Health and Compensation Act of 2010, Title II of Public Law 111–347, and as amended by the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act, Division O, Title IV of Public Law 114–113 (the "Act") to provide full compensation to eligible individuals who were physically injured (as defined herein) as a result of the terrorist-related aircraft crashes of September 11, 2001, or the rescue and recovery efforts during the immediate aftermath of such crashes or debris removal during the immediate aftermath of those crashes, and to the "personal representatives" of those who were killed as a result of the crashes or the rescue and recovery efforts during the immediate aftermath of such crashes or debris removal during the immediate aftermath of such crashes. All compensation provided through the Victim Compensation Fund will be on account of personal physical conditions, physical injuries or death. The provisions of these regulations that relate to filing and evaluation of claims, determination of eligibility, and determination of compensable loss shall apply to all claims that are defined as Group B claims in the Act and in these regulations. Eligibility and compensation for Group A claims has been determined prior to the effective date of these regulations, pursuant to the regulations previously in effect.

§ 104.2 Eligibility definitions and requirements.

(a) *Categories of claims*—(1) *Group A claims.* A claim is a Group A claim if the Special Master has transmitted a final award determination by sending a letter postmarked and transmitted on or before December 17, 2015 indicating the total amount of compensation to which the claimant is entitled for that claim, pursuant to the regulations and methodology in effect on December 17, 2015.

(2) *Group B claims.* A claim is a Group B claim if it is not a Group A claim. An individual can have both Group A claims and Group B claims.

(b) *Eligible claimants.* The term eligible claimants means:

(1) Individuals present at a 9/11 crash site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes and who suffered physical harm, as defined herein, as a direct result of the crashes or the rescue and recovery efforts or debris removal;

(2) The Personal Representatives of deceased individuals aboard American Airlines flights 11 or 77 and United Airlines flights 93 or 175; and

(3) The Personal Representatives of individuals who were present at a 9/11 crash site at the time of or in the immediate aftermath of the crashes and who died as a direct result of the terrorist-related aircraft crash or the rescue and recovery efforts during the immediate aftermath of such crashes or the debris removal during the immediate aftermath of such crashes.

(4) The term eligible claimants does not include any individual or representative of an individual who is identified to have been a participant or conspirator in the terrorist-related crashes of September 11.

(c) *Immediate aftermath.* The term immediate aftermath means any period beginning with the terrorist-related aircraft crashes of September 11, 2001, and ending on May 30, 2002.

(d) *Physical harm.* The term physical harm shall mean:

(1) A WTC-Related Physical Health Condition; or

(2) A physical injury to the body resulting from the 9/11 attacks that was treated by a medical professional within a reasonable time from the date of discovering such harm and is verifiable by medical records created by or at the direction of the medical professional who provided the medical care contemporaneously with the care; but

(3) Not including any Mental Health Condition.

(e) *Mental Health Condition.* The term Mental Health Condition shall mean a mental health condition described in paragraph (1)(A)(ii) or (3)(B) of section 3312(a) of the Public Health Service Act (42 U.S.C. 300 mm–22(a)), or any mental health condition certified under section 3312(b)(2)(B)(iii) of such Act (including such certification as applied under section 3322(a) (42 U.S.C. 300mm–32(a) of such Act), or a mental health condition described in section 3322(b)(2) (42 U.S.C. 300mm–32(b)(2)) of such Act, or any other mental health condition.

(f) *Personal Representative.* The term Personal Representative shall mean the person determined to be the Personal Representative under § 104.4 of this part.

(g) *WTC Health Program.* The term WTC Health Program means the World Trade Center Health Program established by Title I of Public Law 111–347 (codified at Title XXXIII of the Public Health Service Act, 42 U.S.C. 300mm through 300mm–61).

(h) *WTC Program Administrator.* The WTC Program Administrator shall mean the WTC Program Administrator as defined in section 3306 of the Public Health Service Act (42 U.S.C. 300mm–5).

(i) *WTC-Related Physical Health Condition.* The term WTC-Related Physical Health Condition means a WTC-related health condition listed in Section 3312(a) of the Public Health Service Act (42 U.S.C. 300mm–22(a)), including the conditions listed in section 3322(b) of such Act (42 U.S.C. 300mm–32(b)), and including those health conditions added by the WTC Program Administrator through rulemaking pursuant to the Public Health Service Act, 42 CFR part 88, except that such term shall not include any Mental Health Condition.

(j) *9/11 crash site.* The term 9/11 crash site means:

(1) The World Trade Center site, Pentagon site, and Shanksville, Pennsylvania site; or

(2) The buildings or portions of buildings that were destroyed as a result of the terrorist-related airplane crashes of September 11, 2001; or

(3) The area in Manhattan that is south of the line that runs along Canal Street from the Hudson River to the intersection of Canal Street and East Broadway, north on East Broadway to Clinton Street, and east on Clinton Street to the East River; and

(4) Any area related to, or along, routes of debris removal, such as barges and Fresh Kills.

§ 104.3 Other definitions.

(a) *Beneficiary.* The term beneficiary shall mean a person to whom the Personal Representative shall distribute all or part of the award under § 104.52 of this part.

(b) *Dependents.* The Special Master shall identify as dependents those persons so identified by the victim on his or her Federal tax return for the year prior to the year of the victim's death (or those persons who legally could have been identified by the victim on his or her Federal tax return for the year prior to the year of the victim's death) unless:

(1) The claimant demonstrates that a minor child of the victim was born or adopted on or after January 1 of the year of the victim's death;

(2) Another person became a dependent in accordance with then-applicable law on or after January 1 of the year of the victim's death; or

(3) The victim was not required by law to file a Federal income tax return for the year prior to the year of the victim's death.

(c) *Spouse.* The Special Master shall identify as the spouse of a victim the person reported as spouse on the victim's Federal tax return for the year prior to the year of the victim's death (or the person who legally could have been identified by the victim on his or her Federal tax return for the year prior to the year of the victim's death) unless:

(1) The victim was married or divorced in accordance with applicable state law on or after January 1 of the year of the victim's death; or

(2) The victim was not required by law to file a Federal income tax return for the year prior to the year of the victim's death.

(3) The Special Master shall identify as the spouse of a victim any same-sex spouse who was lawfully married to the victim under applicable state law.

(d) *The Act.* The Act, as used in this part, shall mean Public Law 107–42, 115 Stat. 230 ("Air Transportation Safety and System Stabilization Act"), 49 U.S.C. 40101 note, as amended by the James Zadroga 9/11 Health and Compensation Act of 2010, Title II of Public Law 111–347 and as further amended by the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act, Division O, Title IV of Public Law 114–113.

(e) *Victim.* The term victim shall mean an eligible injured claimant or a decedent on whose behalf a claim is brought by an eligible Personal Representative.

(f) *Substantially Complete.* A claim becomes substantially complete when, in the opinion of the Special Master or her designee, the claim contains sufficient information and documentation to determine both the claimant's eligibility and, if the claimant is eligible, an appropriate award.

§ 104.4 Personal Representative.

(a) *In general.* The Personal Representative shall be:

(1) An individual appointed by a court of competent jurisdiction as the Personal Representative of the decedent or as the executor or administrator of the decedent's will or estate.

(2) In the event that no Personal Representative or executor or administrator has been appointed by any court of competent jurisdiction, and such issue is not the subject of pending litigation or other dispute, the Special Master may, in her discretion, determine that the Personal Representative for purposes of compensation by the Fund is the person named by the decedent in the decedent's will as the executor or administrator of the decedent's estate. In the event no will exists, the Special Master may, in her discretion, determine that the Personal Representative for purposes of compensation by the Fund is the first person in the line of succession established by the laws of the decedent's domicile governing intestacy.

(b) *Notice to beneficiaries.* (1) Any purported Personal Representative must, before filing an Eligibility Form, provide written notice of the claim (including a designated portion of the Eligibility Form) to the immediate family of the decedent (including, but not limited to, the decedent's spouse, former spouses, children, other dependents, and parents), to the executor, administrator, and beneficiaries of the decedent's will, and to any other persons who may reasonably be expected to assert an interest in an award or to have a cause of action to recover damages relating to the wrongful death of the decedent.

(2) Personal delivery or transmission by certified mail, return receipt requested, shall be deemed sufficient notice under this provision. The claim forms shall require that the purported Personal Representative certify that such notice (or other notice that the Special Master deems appropriate) has been given. In addition, as provided in § 104.21(b)(5) of this part, the Special Master may publish a list of individuals who have filed Eligibility Forms and the names of the victims for whom compensation is sought, but shall not publish the content of any such form.

(c) *Objections to Personal Representatives.* Objections to the authority of an individual to file as the Personal Representative of a decedent may be filed with the Special Master by parties who assert a financial interest in the award up to 30 days following the filing by the Personal Representative. If timely filed, such objections shall be treated as evidence of a "dispute" pursuant to paragraph (d) of this section.

(d) *Disputes as to identity.* The Special Master shall not be required to arbitrate, litigate, or otherwise resolve any dispute as to the identity of the Personal Representative. In the event of a dispute over the appropriate Personal Representative, the Special Master may suspend adjudication of the claim or, if sufficient information is provided, calculate the appropriate award and authorize payment, but place in escrow any payment until the dispute is resolved either by agreement of the disputing parties or by a court of competent jurisdiction. Alternatively, the disputing parties may agree in writing to the identity of a Personal Representative to act on their behalf, who may seek and accept payment from the Fund while the disputing parties work to settle their dispute.

§ 104.5 Foreign claims.

In the case of claims brought by or on behalf of foreign citizens, the Special Master may alter the requirements for documentation set forth herein to the extent such materials are unavailable to such foreign claimants.

§ 104.6 Amendments to this part.

All claims will be processed in accordance with the current provisions of this part.

Subpart B—Filing for Compensation

§ 104.21 Presumptively covered conditions.

(a) *In general.* The Special Master shall maintain and publish on the Fund's Web site a list of presumptively covered conditions that resulted from the terrorist-related air crashes of September 11, 2001, or rescue and recovery or debris removal efforts during the immediate aftermath of such crashes. The list shall consist of the WTC-Related Physical Health Conditions that resulted from the terrorist-related air crashes of September 11, 2001 or rescue and recovery or debris removal efforts during the immediate aftermath of such crashes. Group B claims shall be eligible for compensation only if the Special Master determines based on the evidence presented that a claimant who seeks compensation for physical harm has at least one WTC-Related Physical Health Condition, with respect to a deceased individual, the cause of such individual's death is determined at least in part to be attributable to a WTC-Related Physical Health Condition.

(b) *Updates.* The Special Master shall update the list of presumptively covered conditions to conform to any changes in the WTC-Related Physical Health Conditions. Claims may then be amended pursuant to § 104.22(e)(ii).

(c) *Conditions other than presumptively covered conditions.* A claimant may also be eligible for payment under § 104.51 where the claimant has at least one WTC-Related Physical Health Condition and the Special Master determines that the claimant—

(1) Has a physical injury to the body that resulted from the terrorist-related air crashes of September 11, 2001 or rescue and recovery or debris removal efforts during the immediate aftermath of such crashes or presents extraordinary circumstances; and

(2) Is otherwise eligible for payment.

§ 104.22 Filing for compensation.

(a) *Compensation form; "filing."* A compensation claim shall be deemed "filed" for purposes of section 405(b)(3) of the Act (providing that the Special Master shall issue a determination regarding the matters that were the subject of the claim not later than 120 calendar days after the date on which a claim is filed), and for any time periods in this part, when it is substantially complete.

(b) *Eligibility Form.* The Special Master shall develop an Eligibility Form, which may be a portion of a complete claim form, that will require the claimant to provide information necessary for determining the claimant's eligibility to recover from the Fund.

(1) The Eligibility Form may require that the claimant certify that he or she has dismissed any pending lawsuit seeking damages as a result of the terrorist-related airplane crashes of September 11, 2001, or for damages arising from or related to debris removal (except for actions seeking collateral source benefits) no later than January 2, 2011 and that there is no pending lawsuit brought by a dependent, spouse, or beneficiary of the victim.

(2) The Special Master may require as part of the notice requirement pursuant to § 104.4(b) that the Personal Representative of the deceased individual provide copies of a designated portion of the Eligibility Form to the immediate family of the decedent (including, but not limited to, the spouse, former spouses, children, other dependents, and parents), to the executor, administrator, and beneficiaries of the decedent's will, and to any other persons who may reasonably be expected to assert an interest in an award or to have a cause of action to recover damages relating to the wrongful death of the decedent.

(3) The Eligibility Form may require claimants to provide the following proof:

(i) Proof of death: Death certificate or similar official documentation;

(ii) Proof of presence at site: Documentation sufficient to establish presence at a 9/11 crash site, which may include, without limitation, a death certificate, proof of residence, such as a lease or utility bill, records of employment or school attendance, contemporaneous medical records, contemporaneous records of federal, state, city or local government, a pay stub, official personnel roster, site credentials, an affidavit or declaration of the decedent's or injured claimant's employer, or other sworn statement (or unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the victim;

(iii) Proof of physical harm: Certification of a conclusion by the WTC Health Program that the claimant suffers from a WTC-Related Physical Health Condition and is eligible for treatment under the WTC Health Program, or verification by the WTC Program Administrator that the claimant suffers from a WTC-Related Physical Health Condition, or other credible medical records from a licensed medical professional.

(iv) Personal Representative: Copies of relevant legal documentation, including court orders; letters testamentary or similar documentation; proof of the purported Personal Representative's relationship to the decedent; copies of wills, trusts, or other testamentary documents; and information regarding other possible beneficiaries as requested by the Eligibility Form;

(v) Any other information that the Special Master deems necessary to determine the claimant's eligibility.

(vi) The Special Master may also require waivers, consents, or authorizations from claimants to obtain directly from third parties tax returns, medical information, employment information, or other information that the Special Master deems relevant in determining the claimant's eligibility or award, and may request an opportunity to review originals of documents submitted in connection with the Fund.

(vii) The Special Master may publish a list of individuals who have filed Eligibility Forms on behalf of a deceased victim and the names of the deceased victims for whom compensation is sought, but shall not publish the content of any such form.

(c) *Personal Injury Compensation Form and Death Compensation Form.* The Special Master shall develop a Personal Injury Compensation Form, which may be a portion of a complete claim form, that each injured claimant must submit. The Special Master shall also develop a Death Compensation Form, which may be a portion of a complete claim form, that each Personal Representative must submit. These forms shall require the claimant to provide certain information that the Special Master deems necessary to determining the amount of any award, including information concerning income, collateral sources, benefits, settlements and attorneys' fees relating to civil actions described in section 405(c)(3)(C)(iii) of the Act, and other financial information, and shall require the claimant to state the factual basis for the amount of compensation sought. It shall also allow the claimant to submit certain other information that may be relevant, but not necessary, to the determination of the amount of any award.

(1) The Special Master may ask claimants to submit certain tax returns or tax transcripts for returns that the Special Master deems appropriate for determination of an award. The Special Master may also require waivers, consents, or authorizations from claimants to obtain directly from third parties medical information, employment information, or other information that the Special Master deems relevant to determining the amount of any award.

(2) Claimants may attach to the 'Personal Injury Compensation Form" or "Death Compensation Form" any additional statements, documents or analyses by physicians, experts, advisors, or any other person or entity that the claimant believes may be relevant to a determination of compensation.

(d) *Submission of a claim.* Section 405(c)(3)(C) of the Act provides that upon the submission of a claim under the Fund, the claimant waives the right to file a civil action (or to be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001, or debris removal, except for civil actions to recover collateral source obligations and civil actions against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act. A claim shall be deemed submitted for purposes of section 405(c)(3)(C) of the Act when the Eligibility Form is deemed filed, regardless of whether any time limits are stayed or tolled.

(e) *Amendment of claims.* A claimant who has previously submitted a claim may amend such claim to include:

(1) An injury or loss that the claimant had not suffered (or did not reasonably know the claimant suffered) at the time the claimant filed the previous claim;

(2) A condition that the Special Master has identified and published in accordance with 104.21(a), since the time the claimant filed the previous claim, as a presumptively covered condition;

(3) An injury for which the claimant was previously compensated by the Fund, but only if that injury has substantially worsened, resulting in damages or loss that was not previously compensated.

(f) *Provisions of information by third parties.* Any third party having an interest in a claim brought by a Personal Representative may provide written statements or information regarding the Personal Representative's claim. The Claims Evaluator or the Special Master or the Special Master's designee may, at his or her discretion, include the written statements or information as part of the claim.

Subpart C—Claim Intake, Assistance, and Review Procedures

§ 104.31 Procedure for claims evaluation.

(a) *Initial review.* Claims Evaluators shall review the forms filed by the claimant and either deem the claim "filed" or notify the claimant of any deficiency in the forms or any required documents.

(b) *Procedure.* The Claims Evaluator shall determine eligibility and the claimant's presumed award pursuant to §§ 104.43 to 104.46 of this part and notify the claimant in writing of the eligibility determination, or the amount of the presumed award as applicable, and the right to request a hearing before the Special Master or her designee under § 104.33 of this part. After an eligible claimant has been notified of the presumed award, within 30 days the claimant may either accept the presumed compensation determination as the final determination and request payment, or may instead request a review before the Special Master or her designee pursuant to § 104.33. Claimants found to be ineligible may appeal pursuant to § 104.32.

(c) *Multiple claims from the same family.* The Special Master may treat claims brought by or on behalf of two or more members of the same immediate family as related or consolidated claims for purposes of determining the amount of any award.

§ 104.32 Eligibility review.

Any claimant deemed ineligible by the Claims Evaluator may appeal that decision to the Special Master or her designee by filing an eligibility appeal within 30 days on forms created by the office of the Special Master.

§ 104.33 Hearing.

(a) *Conduct of hearings.* Hearings shall be before the Special Master or her designee. The objective of hearings shall be to permit the claimant to present information or evidence that the claimant believes is necessary to a full understanding of the claim. The claimant may request that the Special Master or her designee review any evidence relevant to the determination of the award, including without limitation: The nature and extent of the claimant's injury; evidence of the claimant's presence at a 9/11 crash site; factors and variables used in calculating economic loss; the identity of the victim's spouse and dependents; the financial needs of the claimant, facts affecting noneconomic loss; and any factual or legal arguments that the claimant contends should affect the award. Claimants shall be entitled to submit any statements or reports in writing. The Special Master or her designee may require authentication of documents, including medical records and reports, and may request and consider information regarding the financial resources and expenses of the victim's family or other material that the Special Master or her designee deems relevant.

(b) *Location and duration of hearings.* The hearings shall, to the extent practicable, be scheduled at times and in locations convenient to the claimant or his or her representative. The hearings shall be limited in length to a time period determined by the Special Master or her designee.

(c) *Witnesses, counsel, and experts.* Claimants shall be permitted, but not required, to present witnesses, including expert witnesses. The Special Master or her designee shall be permitted to question witnesses and examine the credentials of experts. The claimant shall be entitled to be represented by an attorney in good standing, but it is not necessary that the claimant be represented by an attorney. All testimony shall be taken under oath.

(d) *Waivers.* The Special Master shall have authority and discretion to require any waivers necessary to obtain more individualized information on specific claimants.

(e) *Award Appeals.* For award appeals, the Special Master or her designee shall make a determination whether:

(1) There was an error in determining the presumptive award, either because

the claimant's individual criteria were misapplied or for another reason; or

(2) The claimant presents extraordinary circumstances not adequately addressed by the presumptive award.

(f) *Determination.* The Special Master shall notify the claimant in writing of the final amount of the award, but need not create or provide any written record of the deliberations that resulted in that determination. There shall be no further review or appeal of the Special Master's determination. In notifying the claimant of the final amount of the award, the Special Master may designate the portions or percentages of the final award that are attributable to economic loss and non-economic loss, respectively, and may provide such other information as appropriate to provide adequate guidance for a court of competent jurisdiction and a personal representative.

§ 104.34 Publication of awards.

The Special Master reserves the right to publicize the amounts of some or all of the awards, but shall not publish the name of the claimants or victims that received each award. If published, these decisions would be intended by the Special Master as general guides for potential claimants and should not be viewed as precedent binding on the Special Master or her staff.

§ 104.35 Claims deemed abandoned by claimants.

The Special Master and her staff will endeavor to evaluate promptly any information submitted by claimants. Nonetheless, it is the responsibility of the claimant to keep the Special Master informed of his or her current address and to respond within the duration of this program to requests for additional information. Claims outstanding because of a claimant's failure to complete his or her filings shall be deemed abandoned.

Subpart D—Amount of Compensation for Eligible Claimants

§ 104.41 Amount of compensation.

As provided in section 405(b)(1)(B)(ii) of the Act, in determining the amount of compensation to which a claimant is entitled, the Special Master shall take into consideration the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant. The individual circumstances of the claimant may include the financial needs or financial resources of the claimant or the victim's dependents and beneficiaries. As provided in section 405(b)(6) of the Act, the Special Master shall reduce the amount of compensation by the amount of collateral source compensation the claimant (or, in the case of a Personal Representative, the victim's beneficiaries) has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001. In no event shall a Group B claim receive an amount of compensation that is greater than the amount of loss determined pursuant to these regulations less the amount of any collateral source compensation that the claimant has received or is entitled to receive for such claim as a result of the terrorist related aircraft crashes of September 11, 2001 for the Group B claim.

§ 104.42 Applicable state law.

The phrase "to the extent recovery for such loss is allowed under applicable state law," as used in the statute's definition of economic loss in section 402(5) of the Act, is interpreted to mean that the Special Master is not permitted to compensate claimants for those categories or types of economic losses that would not be compensable under the law of the state that would be applicable to any tort claims brought by or on behalf of the victim.

§ 104.43 Determination of presumed economic loss for decedents.

In reaching presumed determinations for economic loss for Personal Representatives bringing claims on behalf of eligible decedents, the Special Master shall consider sums corresponding to the following:

(a) *Loss of earnings or other benefits related to employment.* The Special Master, as part of the process of reaching a "determination" pursuant to section 405(b) of the Act, has developed a methodology and may publish updated schedules, tables, or charts that will permit prospective claimants to estimate determinations of loss of earnings or other benefits related to employment based upon individual circumstances of the deceased victim, including: The age of the decedent as of the date of death; the number of dependents who survive the decedent; whether the decedent is survived by a spouse; and the amount and nature of the decedent's income for recent years. The decedent's salary/income in the three years preceding the year of death (or for other years the Special Master deems relevant) shall be evaluated in a manner that the Special Master deems appropriate. The Special Master may, if she deems appropriate, take an average of income figures for the three years preceding the year of death, and may also consider income for other periods that she deems appropriate, including published pay scales for victims who were government or military employees. In computing any loss of earnings due to physical harm as defined herein the Special Master shall, for each year for which any loss of earnings or other benefits related to employment is computed, limit the annual past or projected future gross income of the decedent to an amount that is not greater than $200,000. For purposes of the computation of loss of earnings, annual gross income shall have the meaning given such term in section 61 of the Internal Revenue Code of 1986. In cases where the victim was a minor child, the Special Master may assume an average income for the child commensurate with the average income of all wage earners in the United States. For victims who were members of the armed services or government employees such as firefighters or police officers, the Special Master may consider all forms of compensation (or pay) to which the victim was entitled. For example, military service members' and uniformed service members' compensation includes all of the various components of compensation, including, but not limited to, basic pay (BPY), basic allowance for housing (BAH), basic allowance for subsistence (BAS), federal income tax advantage (TAD), overtime bonuses, differential pay, and longevity pay.

(b) *Medical expense loss.* This loss equals the documented past out-of-pocket medical expenses that were incurred as a result of the eligible physical harm suffered by the decedent (*i.e.,* those medical expenses that were not paid for or reimbursed through health insurance or other programs). This loss shall be calculated on a case-by-case basis, using documentation and other information submitted by the Personal Representative. The Special Master shall not consider any future medical expense loss.

(c) *Replacement services loss.* For decedents who did not have any prior earned income, or who worked only part-time outside the home, economic loss may be determined with reference to replacement services and similar measures.

(d) *Loss due to death/burial costs.* This loss shall be calculated on a case-by-case basis, using documentation and other information submitted by the personal representative and includes the out-of-pocket burial costs that were incurred.

(e) *Loss of business or employment opportunities.* Such losses shall be addressed through the procedure outlined above in paragraph (a) of this section.

§ 104.44 Determination of presumed noneconomic losses for death for claims on behalf of decedents.

The presumed non-economic losses for an eligible death shall be $250,000 plus an additional $100,000 for the spouse and each dependent of the deceased victim. Such presumed losses include a noneconomic component of replacement services loss.

§ 104.45 Determination of presumed economic loss for injured claimants.

In reaching presumed determinations for economic loss for claimants who suffered an eligible physical harm (but did not die), the Special Master shall consider sums corresponding to the following:

(a) *Loss of earnings or other benefits related to employment.* The Special Master may determine the loss of earnings or other benefits related to employment on a case-by-case basis, using documentation and other information submitted by the claimant, regarding the actual amount of work that the claimant has missed or will miss without compensation. Alternatively, the Special Master may determine the loss of earnings or other benefits related to employment by relying upon the methodology created pursuant to § 104.43(a) and adjusting the loss based upon the extent of the victim's physical harm. In determining or computing any loss of earnings due to eligible physical harm, the Special Master shall, for each year of any past or projected future loss of earnings or other benefits related to employment, limit the annual gross income of the claimant to an amount that is not greater than $200,000. For purposes of the computation of loss of earnings, annual gross income shall have the meaning given such term in section 61 of the Internal Revenue Code of 1986.

(1) Disability; in general. In evaluating claims of disability, the Special Master will, in general, make a determination regarding whether the claimant is capable of performing his or her usual profession in light of the eligible physical conditions. The Special Master may require that the claimant submit an evaluation of the claimant's disability and ability to perform his or her occupation prepared by medical experts.

(2) Total permanent disability. With respect to claims of total permanent disability, the Special Master may accept a determination of disability made by the Social Security Administration as evidence of disability without any further medical evidence or review. The Special Master may also consider determinations of permanent total disability made by other governmental agencies or private insurers in evaluating the claim.

(3) Partial disability. With respect to claims of partial disability, the Special Master may consider evidence of the effect of the partial disability on the claimant's ability to perform his or her usual occupation as well as the effect of the partial disability on the claimant's ability to participate in usual daily activities.

(b) *Medical Expense Loss.* This loss equals the documented past out-of-pocket medical expenses that were incurred as a result of the physical harm suffered by the victim (*i.e.*, those medical expenses that were not paid for or reimbursed through health insurance or other programs). The Special Master shall not consider any future medical expense loss.

(c) *Replacement Services.* For claimants who suffer physical harm and did not have any prior earned income or who worked only part time outside the home, economic loss may be determined with reference to replacement services and similar measures.

(d) *Loss of business or employment opportunities.* Such losses shall be addressed through the procedure outlined above in paragraph (a) of this section.

(e) *Determination of Noneconomic Loss for Claimants Who Have a WTC-Related Physical Condition and Who Are Found Eligible for Economic Loss.* The Special Master shall determine the appropriate noneconomic loss for such claimants in accordance with the provisions of § 104.46, taking into account the extent of disability, and may consider whether the claimant has multiple WTC-Related Physical Health Conditions that contribute to the disability.

§ 104.46 Determination of presumed noneconomic losses for injured claimants

The Special Master may determine the presumed noneconomic losses for claimants who suffered physical harm (but did not die) by relying upon the noneconomic losses described in § 104.44 and adjusting the losses based upon the extent of the victim's physical harm. The presumed noneconomic loss for a claim based on any single type of cancer shall not exceed $250,000 and the presumed noneconomic loss for a claim based on any single type of non-cancer condition shall not exceed $90,000. Such presumed losses include any noneconomic component of replacement services loss. The Special Master has discretion to consider the effect of multiple cancer conditions or multiple cancer and non-cancer conditions in computing the total noneconomic loss.

§ 104.47 Collateral sources.

(a) *Payments that constitute collateral source compensation.* The amount of compensation shall be reduced by all collateral source compensation the claimant has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001, or debris removal in the immediate aftermath, including life insurance, pension funds, death benefits programs, payments by Federal, State, or local governments related to the terrorist-related aircraft crashes of September 11, 2001, or debris removal and payments made pursuant to the settlement of a civil action as described in section 405(c)(3)(C)(iii) of the Act. In determining the appropriate collateral source offset for future benefit payments, the Special Master may employ an appropriate methodology for determining the present value of such future benefits. In determining the appropriate value of offsets for pension funds, life insurance and similar collateral sources, the Special Master may, as appropriate, reduce the amount of offsets to take account of self-contributions made or premiums paid by the victim during his or her lifetime. In determining the appropriate collateral source offset for future benefit payments that are contingent upon one or more future event(s), the Special Master may reduce such offsets to account for the possibility that the future contingencies may or may not occur. In cases where the recipients of collateral source compensation are not beneficiaries of the awards from the Fund, the Special Master shall have discretion to exclude such compensation from the collateral source offset where necessary to prevent beneficiaries from having their awards reduced by collateral source compensation that they will not receive.

(b) *Payments that do not constitute collateral source compensation.* The following payments received by claimants do not constitute collateral source compensation:

(1) The value of services or in-kind charitable gifts such as provision of emergency housing, food, or clothing; and

(2) Charitable donations distributed to the beneficiaries of the decedent, to the injured claimant, or to the beneficiaries of the injured claimant by privately funded charitable entities; provided

however, that the Special Master may determine that funds provided to victims or their families through a privately funded charitable entity constitute, in substance, a payment described in paragraph (a) of this section.

(3) Tax benefits received from the Federal government as a result of the enactment of the Victims of Terrorism Tax Relief Act.

Subpart E—Payment of Claims

§ 104.51 Payments to eligible individuals.

(a) *Payment date.* Subject to paragraph (c) of this section, the Special Master shall authorize payment of an award to a claimant not later than 20 days after the date on which:

(1) The claimant accepts the presumed award; or

(2) A final award for the claimant is determined after a hearing on appeal.

(b) *Failure to accept or appeal presumed award.* If a claimant fails to accept or appeal the presumed award determined for that claimant within 30 days, the presumed award shall be deemed to have been accepted and all rights to appeal the award shall have been waived.

(c) *Payment of Group A claims.* Group A claims shall be paid as soon as practicable from the capped amount appropriated for such claims of $2,775,000,000.

(d) *Payment of Group B claims.* Group B claims may be paid after the date on which new Group B claims may be filed under these regulations from the amount appropriated for Group A claims if and to the extent that there are funds remaining after all Group A claims have been paid and, thereafter, from the $4,600,000,000 amount appropriated specifically for Group B claims once it becomes available in fiscal year 2017 until expended.

(e) *Prioritization.* The Special Master shall identify claims that present the most debilitating physical conditions and shall prioritize the compensation of such claims so that claimants with such debilitating conditions are not unduly burdened.

(f) *Reassessment.* Commencing on December 18, 2017, and continuing at least annually thereafter until the closure of the Victim Compensation Fund, the Special Master shall review and reassess policies and procedures and make such adjustments as may be necessary to ensure that the total expenditures including administrative costs in providing compensation for claims in Group B do not exceed the funds deposited into the Victim Compensation Fund and to ensure that the compensation of those claimants who suffer from the most debilitating physical conditions is prioritized to avoid undue burden on such claimants.

§ 104.52 Distribution of award to decedent's beneficiaries.

The Personal Representative shall distribute the award in a manner consistent with the law of the decedent's domicile or any applicable rulings made by a court of competent jurisdiction. The Special Master may require the Personal Representative to provide to the Special Master a plan for distribution of any award received from the Fund before payment is authorized. Notwithstanding any other provision of these regulations or any other provision of state law, in the event that the Special Master concludes that the Personal Representative's plan for distribution does not appropriately compensate the victim's spouse, children, or other relatives, the Special Master may direct the Personal Representative to distribute all or part of the award to such spouse, children, or other relatives.

Subpart F—Limitations

§ 104.61 Limitation on civil actions.

(a) *General.* Section 405(c)(3)(C) of the Act provides that upon the submission of a claim under the Fund, the claimant waives the right to file a civil action (or be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001, or for damages arising from or related to debris removal, except that this limitation does not apply to recover collateral source obligations, or to a civil action against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act. The Special Master shall take appropriate steps to inform potential claimants of section 405(c)(3)(C) of the Act.

(b) *Pending actions.* Claimants who have filed a civil action or who are a party to such an action as described in paragraph (a) of this section may not file a claim with the Special Master unless they withdraw from such action not later than January 2, 2012.

(c) *Settled actions.* In the case of an individual who settled a civil action described in Section 405(c)(3)(C) of the Act, such individual may not submit a claim under this title unless such action was commenced after December 22, 2003, and a release of all claims in such action was tendered prior to January 2, 2011.

§ 104.62 Time limit on filing claims.

(a) *In general. Group B claims.* Group B claims that were not submitted to the Victim Compensation Fund on or before December 17, 2015 may be filed by an individual (or by a personal representative on behalf of a deceased individual) during the period beginning on June 15, 2016, and ending on December 18, 2020. Notwithstanding the above, an individual who intends to file a Group B claim must register with the Victim Compensation Fund in accordance with the following:

(1) In the case that the individual knew (or reasonably should have known) before October 3, 2011, that the individual suffered a physical harm or died as a result of the terrorist-related aircraft crashes of September 11, 2001, or as a result of debris removal, and is eligible to file a claim under this part as of October 3, 2011, the individual or representative of such individual as appropriate may file a claim not later than October 3, 2013.

(2) In the case that the individual first knew (or reasonably should have known) on or after October 3, 2011, that the individual suffered a physical harm or died or in the case that the individual became eligible to file a claim under this part on or after that date, the individual or representative of such individual as appropriate may file a claim not later than the last day of the 2-year period beginning on the date that the individual or representative first knew (or should have known) that the individual both suffered from such harm and was eligible to file a claim under this title, but in no event beyond December 18, 2020.

(b) *Determination by Special Master.* The Special Master or the Special Master's designee should determine the timeliness of all claims under paragraph of this section.

§ 104.63 Subrogation.

Compensation under this Fund does not constitute the recovery of tort damages against a third party nor the settlement of a third party action, and the United States shall be subrogated to all potential claims against third party tortfeasors of any victim receiving compensation from the Fund. For that reason, no person or entity having paid other benefits or compensation to or on behalf of a victim shall have any right of recovery, whether through subrogation or otherwise, against the compensation paid by the Fund.

Subpart G—Measures To Protect the Integrity of the Compensation Program

§ 104.71 Procedures to prevent and detect fraud.

(a) *Review of claims.* For the purpose of detecting and preventing the payment of fraudulent claims and for the purpose of assuring accurate and appropriate payments to eligible claimants, the Special Master shall implement procedures to:

(1) Verify, authenticate, and audit claims;

(2) Analyze claim submissions to detect inconsistencies, irregularities, duplication, and multiple claimants; and

(3) Ensure the quality control of claims review procedures.

(b) *Quality control.* The Special Master shall institute periodic quality control audits designed to evaluate the accuracy of submissions and the accuracy of payments, subject to the oversight of the Inspector General of the Department of Justice.

(c) *False or fraudulent claims.* The Special Master shall refer all evidence of false or fraudulent claims to appropriate law enforcement authorities.

Subpart H—Attorney Fees

§ 104.81 Limitation on attorney fees.

(a) *In general*—(1) *In general.* Notwithstanding any contract, the representative of an individual may not charge, for services rendered in connection with the claim of an individual under this title, including expenses routinely incurred in the course of providing legal services, more than 10 percent of an award paid under this title on such claim. Expenses incurred in connection with the claim of an individual in this title other than those that are routinely incurred in the course of providing legal services may be charged to a claimant only if they have been approved by the Special Master.

(2) *Certification.* In the case of any claim in connection with which services covered by this section were rendered, the representative shall certify his or her compliance with this section and shall provide such information as the Special Master requires to ensure such compliance.

(b) *Limitation*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, in the case of an individual who was charged a legal fee in connection with the settlement of a civil action described in section 405(c)(3)(C)(iii) of the Act, the representative who charged such legal fee may not charge any amount for compensation for services rendered in connection with a claim filed by or on behalf of that individual under this title.

(2) *Exception.* If the legal fee charged in connection with the settlement of a civil action described in section 405(c)(3)(C)(iii) of the Act of an individual is less than 10 percent of the aggregate amount of compensation awarded to such individual through such settlement, the representative who charged such legal fee to that individual may charge an amount for compensation for services rendered to the extent that such amount charged is not more than Ten (10) percent of such aggregate amount through the settlement, minus the total amount of all legal fees charged for services rendered in connection with such settlement.

(c) *Discretion to lower fee.* In the event that the Special Master finds that the fee limit set by paragraph (a) or (b) of this section provides excessive compensation for services rendered in connection with such claim, the Special Master may, in the discretion of the Special Master, award as reasonable compensation for services rendered an amount lesser than that permitted for in paragraph (a) of this section.

Dated: June 13, 2016.

Sheila L. Birnbaum,

Special Master.

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the benefit payments regulation for valuation dates in July 2016 and interest assumptions under the asset allocation regulation for valuation dates in the third quarter of 2016. The interest assumptions are used for valuing and paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy (*Murphy.Deborah@PBGC.gov*), Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) and Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribe actuarial assumptions—including interest assumptions — for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulations are also published on PBGC's Web site (*http://www.pbgc.gov*).

The interest assumptions in Appendix B to Part 4044 are used to value benefits for allocation purposes under ERISA section 4044. PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for July 2016 and updates the asset allocation interest assumptions for the third quarter (July through September) of 2016.

The third quarter 2016 interest assumptions under the allocation regulation will be 2.50 percent for the first 20 years following the valuation date and 2.85 percent thereafter. In comparison with the interest assumptions in effect for the second quarter of 2016, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), a decrease of 0.27 percent in the select rate, and a decrease of 0.01 percent in the ultimate rate (the final rate).

The July 2016 interest assumptions under the benefit payments regulation will be 0.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for June 2016, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits under plans with valuation dates during July 2016, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 273, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*		
273	7–1–16	8–1–16	0.75	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 273, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*		
273	7–1–16	8–1–16	0.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for July–September 2016, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for $t =$	i_t	for $t =$	i_t	for $t =$
*	*	*	*	*	*	*
July–September 2016	0.0250	1–20	0.0285	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of June 2016.

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2016–14076 Filed 6–14–16; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0063]

32 CFR Part 311

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Direct final rule.

SUMMARY: The Office of the Secretary of Defense is exempting those records contained in DMDC 24 DoD, entitled "Defense Information System for Security (DISS)," when investigatory material is compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that such material would reveal the identity of a confidential source.

This direct final rule establishes a new exemption to the Office of the Secretary Privacy Program. The Defense Information System for Security is the new DoD enterprise-wide information system for personnel security; it provides a common, comprehensive medium to request, record, document, and identify personnel security actions within the Department including: Determinations of eligibility and access to classified information, national security, suitability and/or fitness for employment, and HSPD–12 determination for Personal Identity Verification (PIV) to access government facilities and systems, submitting adverse information, verification of investigation and or adjudicative status, support of continuous evaluation and insider threat detection, prevention, and mitigation activities. DISS consists of two applications, the Case Adjudication Tracking system (CATS) and the Joint Verification System (JVS). CATS is used by the DoD Adjudicative Community for the purpose of recording eligibility determinations. JVS is used by DoD Security Managers and Industry Facility Security Officers for the purpose of verifying eligibility, recording access determinations, submitting incidents for subsequent adjudication, and visit requests from the field (worldwide). The records may also be used as a management tool for statistical analyses, tracking, reporting, evaluating program effectiveness, and conducting research. This direct final rule is consistent with the rule currently published regarding DMDC 11, Investigative Records Repository.

DATES: The rule is effective on September 13, 2016 unless adverse comments are received by August 15, 2016. If adverse comment is received, the Department of Defense will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Luz D. Ortiz, 571–372–0478.

SUPPLEMENTARY INFORMATION: This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves non-substantive changes dealing with DoD's management of its Privacy Programs. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense. A Regulatory Flexibility Analysis is not required.

Public Law 95–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that this Privacy Act rule for the Department of Defense imposes no additional information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1074.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that this Privacy Act rule for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that this rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that this Privacy Act rule for the Department of Defense does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, no Federalism assessment is required.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

PART 311—OFFICE OF THE SECRETARY OF DEFENSE AND JOINT STAFF PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. Section 311.8 is amended by adding paragraph (c)(27) to read as follows:

§311.8 Procedures for exemptions.

* * * * *

(c) * * *

(27) *System identifier and name:* DMDC 24 DoD, Defense Information System for Security (DISS).

(i) *Exemption:* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) *Authority:* 5 U.S.C. 552a(k)(5).

(iii) *Reasons:* (A) from subsections (c)(3) and (d) when access to accounting disclosure and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From subsection (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. It is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

Dated: May 24, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–14183 Filed 6–14–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2016–0358]

Special Local Regulation; Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation for the Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races from 7 a.m. to 5:30 p.m. each day, from July 29, 2016, through July 31, 2016. This enforcement action is necessary to assist in minimizing the inherent dangers associated with hydroplane races. Our regulation for Recurring Marine Events in Captain of the Port Sector Columbia River Zone identifies the regulated area for this regatta. During the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port or a designated representative.

DATES: The regulation in 33 CFR 100.1303 will be enforced from 7 a.m. until 5:30 p.m. on July 29, 2016 through July 31, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Mr. Ken Lawrenson, Waterways Management Division, MSU Portland, Oregon, Coast Guard; telephone 503–240–9319, email *msupdxwwm@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.1303 from 7 a.m. until 5:30 p.m. on July 29, 2016, through July 31, 2016, for the Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races. This enforcement action is being taken to provide for the safety of life on navigable waterways during the regatta. Our regulation for Annual Kennewick, Washington, Columbia Unlimited Hydroplane, § 100.1303, specifies the location of the regulated area for all waters of the Columbia river bounded by two lines drawn from between position latitude 46°14′07″ N., longitude 119°10′42″ W. and position latitude 46°13′42″ N., longitude 119°10′51″ W.; and the second line running between position latitude 46°13′35″ N., longitude 119°07′34″ W. and position latitude 46°13′10″ N., longitude 119°07′47″ W. As specified in § 100.1303, during the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Sector Columbia River (COTP) or a COTP designated representative.

This notice of enforcement is issued under authority of 33 CFR 100.1303 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: June 7, 2016.

D.F. Berliner,

Captain, U.S. Coast Guard, Alternate Captain of the Port, Sector Columbia River.

[FR Doc. 2016–14067 Filed 6–14–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0497]

Drawbridge Operation Regulation; Mullica River, Green Bank, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Green Bank Bridge (Green Bank Road/CR563) across the Mullica River, mile 18.0, at Green Bank, NJ. The deviation is necessary to perform bridge repairs. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective from 7:30 a.m. on June 20, 2016, through 3:30 p.m. on June 23, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0497] is available at *http://www.regulations.gov*. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6222, email *Hal.R.Pitts@uscg.mil*.

SUPPLEMENTARY INFORMATION: Atlantic County, NJ, that owns and operates the Green Bank Bridge (Green Bank Road/CR563), has requested a temporary deviation from the current operating regulations to perform urgent repairs to the bridge operating machinery. The bridge is a bascule draw bridge and has a vertical clearance in the closed position of 5 feet above mean high water.

The current operating schedule is set out in 33 CFR 117.731(b). Under this temporary deviation, the bridge will remain in the closed-to-navigation position from 7:30 a.m. on June 20, 2016, through 3:30 p.m. on June 23, 2016. At all other times the bridge will operate per 33 CFR 117.731(b).

The Mullica River is used by a variety of vessels including small U.S. government vessels, small commercial vessels, and recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed position may do so. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transit to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 9, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–14064 Filed 6–14–16; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket No. RM2016–8; Order No. 3360]

Mail Classification Schedule

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a set of final rules amending existing rules related to the Mail Classification Schedule and its associated product lists. The final rules revise some existing rules in order to better conform with current Commission practices related to the Mail Classification Schedule. Relative to the proposed rules, one change was made for clarification purposes. No other proposed rules were changed.

DATES: *Effective* July 15, 2016.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Regulatory History

81 FR 21506, April 12, 2016

Table of Contents

I. Introduction
II. Comments and Discussion
III. Ordering Paragraphs

I. Introduction

On April 6, 2016, the Postal Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking Concerning Product Lists and the Mail Classification Schedule, April 6, 2016.[1] The Commission proposed rules to fulfill its responsibilities under the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006). The rulemaking proposes to replace existing 39 CFR part 3020, subpart A in its entirety, and make conforming changes to 39 CFR part 3020, subparts B, C, and D.

The rulemaking proposes to amend existing rules concerning the Mail Classification Schedule (MCS) and the associated market dominant and competitive product lists to conform to the current practice of publishing the MCS on the Commission's Web site at *www.prc.gov*, noticing changes to the market dominant and competitive product lists in the **Federal Register**, and publishing the market dominant and competitive product lists in the Code of Federal Regulations (CFR).

The Public Representative and the Postal Service filed comments in response to Order No. 3213.[2] The commenters were generally supportive of the proposed rules. The commenters also included suggestions for improvements and sought minor clarification on various aspects of the proposed rules.

The Commission adopts the proposed rules as final rules with one minor clarification added to proposed § 3020.5(a).

II. Comments and Discussion

A. Public Representative Comments

The Public Representative generally supports adoption of the proposed rules and presents several suggestions for improvement.

The Public Representative states it appears that the Commission's intent is to publish updates to the product lists in the CFR on a quarterly basis. PR Comments at 2. He bases this assumption on the following:

> The current practice of the Commission is to accumulate all final orders involving changes to product lists and to file a product list update with the **Federal Register** on a quarterly basis.

Order No. 3213 at 7. Regardless, he notes that proposed § 3020.3(b) does not expressly state that updates will occur on a quarterly basis. He suggests the addition of the word "quarterly" to the proposed rule such that it reads: "Notice shall be submitted 'quarterly' to the **Federal Register** for publication within 6 months of the issue date of the applicable final order that affects the change." PR Comments at 2.

The Commission intends to publish updates to the product lists appearing in the CFR on a quarterly basis. A further goal is to publish updates within one week of the close of each fiscal quarter. However, the Commission chooses not to make quarterly publication a rigid requirement, as would be the case if the word "quarterly" was added to the rule. Experience has shown that the press of more important business occasionally takes precedence over producing the quarterly updates. Although the quarterly updates are an important recordkeeping function that provides visibility into current Postal Service product offerings, publication does not directly affect the substantive rights of any interested persons and may be delayed when necessary.[3]

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[1] Notice of Proposed Rulemaking Concerning Product Lists and the Mail Classification Schedule, April 6, 2016 (Order No. 3213); *see also* 81 FR 21506 (April 12, 2016).

[2] Public Representative Comments on Proposed Rulemaking Concerning Product Lists and the Mail Classification Schedule, May 12, 2016 (PR Comments); United States Postal Service Comments on Proposed Rules Concerning Product Lists and the Mail Classification Schedule, May 12, 2016 (Postal Service Comments).

The Public Representative states that proposed § 3020.5(a) may be interpreted to require the Commission to "immediately" update the MCS whenever the Commission issues a final order to update the MCS. PR Comments at 2. However, proposed § 3020.5(a) states that "Modification to the Mail Classification Schedule shall be incorporated within 3 months of the issue date of the final order." The Public Representative suggests clarifying proposed § 3020.5(a) by adding the phrase "in accordance with section (b)" such that it reads: "Whenever the Postal Regulatory Commission issues a final order that modifies the Mail Classification Schedule, it shall update the Mail Classification Schedule appearing on its Web site at *http://www.prc.gov* 'in accordance with section (b).' " Id.

The Commission will modify § 3020.5(a) to read: "Whenever the Postal Regulatory Commission issues a final order that modifies the Mail Classification Schedule, it shall update the Mail Classification Schedule appearing on its Web site at *http://www.prc.gov* in accordance with paragraph (b) of this section."

The Public Representative reminds the Commission that appendices A and B, containing the market dominant and competitive product lists appearing in the proposed rules, may not be up to date as of the time the final rule is issued. He suggests that product lists, current as of the time the final order is issued in this docket, appear in the final order. *Id.*

The Commission has established a quarterly update schedule for product lists. Administratively, it is most efficient for the Commission to adhere to that schedule.[4] Thus, the product lists that appear in the final rule will be equivalent to the product lists that appear in the CFR at the time the final rule is issued. The next comprehensive update is scheduled for July of 2016.

B. Postal Service Comments

The Postal Service supports the Commission's general approach of including the product lists, but not the MCS, in the CFR. Postal Service Comments at 2. Additionally, the Postal Service seeks further clarification of two aspects of the proposals.

The Postal Service observes that proposed § 3020.1(b) includes new references to 39 U.S.C. 404(e) (nonpostal services) and 39 U.S.C. 3641 (market tests). Postal Service Comments at 3. Furthermore, it states that the MCS currently requires identification of products that are either nonpostal services or market tests. *Id.* at 3–4. The Postal Service is concerned by the description appearing in Order No. 3213, in regard to these new statutory references. Specifically, it expresses concern with the use of "expands upon" in the description, as it could create unnecessary confusion. *Id.* at 4.

> Proposed § 3020.1(b) replaces existing § 3020.1(a). Both specify that the starting point for the product lists are the market dominant products identified in 39 U.S.C. 3621(a) and the competitive products identified in 39 U.S.C. 3631(a). Proposed § 3020.1(b) expands upon this requirement by including products within the product lists identified as market tests pursuant to 39 U.S.C. 3641 and nonpostal pursuant to 39 U.S.C. 404(e). This flows from the requirement for the Postal Service to properly categorize market tests as either market dominant or competitive (39 U.S.C. 3641(b)(2)) and the Commission to properly categorize nonpostal services as either market dominant or competitive (39 U.S.C. 404(e)(5)).

Order No. 3213 at 5–6 [emphasis added, footnote omitted].

The Commission's intent of including citations to the statutory authority for nonpostal services or market tests is not to expand upon or otherwise affect the substantive requirements, or the scope of Commission review, relating to these types of products. The inclusion only expands upon the description appearing in existing § 3020.1(a) of the types of products that are intended to appear on product lists and in the MCS.[5] There is no change to current practice.

The Postal Service contends that it is duplicative to require the inclusion of size and weight limitations in the MCS in both proposed § 3020.4(b) and in existing § 3020.110. Postal Service Comments at 4. It suggests either deleting existing § 3020.11, or cross-referencing § 3020.110 in § 3020.4(b). *Id.* at 4–5.

> Proposed § 3020.4(b)(2)(ii)(A) and § 3020.4(b)(3)(ii)(A) read:
>
> Where applicable, the general characteristics, size and weight limitations, minimum volume requirements, price categories, and available optional features of each market dominant product.

Order No. 3213 at 12–13.

> Existing § 3020.110 reads:
>
> Applicable size and weight limitations for mail matter shall appear in the Mail Classification Schedule as part of the description of each product.

39 CFR 3020.110, subpart F.

The Commission concurs that the requirements appear duplicative, but will not make any changes at this time. The requirements are consistent with each other. However, as explained below, the underlying source for each requirement is different. Any potential confusion should be minimal.

The requirements of proposed § 3020.4(b)(2)(ii)(A) and § 3020.4(b)(3)(ii)(A) reflect useful information that historically has been included in mail classification schedules. It is appropriate to include a general synopsis of all material that will appear in the MCS in one section of the regulations.

The requirements of § 3020.110 *et seq.* were written in direct response to the new requirements of 39 U.S.C. 3682. This statutory provision requires, among other things, the Commission to prescribe rules for Postal Service requests to establish size and weight limitations for mail matter in the market dominant category of mail. Section 3020.110 points to the source of the material (the MCS) that all of § 3020.110 *et seq.* addresses. Deleting § 3020.110 would potentially make the remainder of that subpart unclear.[6]

III. Ordering Paragraphs

It is ordered:

1. Part 3020 of title 39, Code of Federal Regulations, is amended as set forth below the signature of this Order, effective 30 days after publication in the **Federal Register**.

2. The Secretary shall arrange for publication of this Order in the **Federal Register**.

3. Docket No. RM2016–8 is hereby closed.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure.

For the reasons discussed in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

---

[3] The Commission's position is that Commission orders issued within its jurisdiction are binding upon the Postal Service when issued, unless challenged pursuant to 39 U.S.C. 3663. Order No. 3213 at 7. The quarterly updates merely represent the effect of previously issued Commission orders.

[4] A significant amount of tracking information indicating the source of product list changes appears in the quarterly update notices. Including the tracking information in this Order would be confusing and therefore not appropriate at this time.

[5] Existing § 3020.13 already includes nonpostal services and market tests in product lists and the MCS.

[6] While adding a cross-reference to proposed § 3020.4(b)(2)(ii)(A) and § 3020.4(b)(3)(ii)(A) may not be technically incorrect, it may diminish the distinction that the Commission is attempting to preserve, which is that 39 U.S.C. 3682 is the source for the regulations appearing in § 3020.110 *et seq.*

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise subpart A to read as follows:

Subpart A—Product Lists and the Mail Classification Schedule

Sec.
3020.1 Applicability.
3020.2 Product lists.
3020.3 Notice of product list change.
3020.4 Mail Classification Schedule.
3020.5 Modifications to the Mail Classification Schedule.
Appendix A to Subpart A of Part 3020—Market Dominant Product List
Appendix B to Subpart A of Part 3020—Competitive Product List

§ 3020.1 Applicability.

(a) The rules in this part require the Postal Regulatory Commission to establish and maintain lists of Postal Service products and a Mail Classification Schedule.

(b) The product lists shall categorize postal products as either market dominant or competitive. As established, the market dominant and competitive product lists shall be consistent with the market dominant products identified in 39 U.S.C. 3621(a) and the competitive products identified in 39 U.S.C. 3631(a). The market dominant and competitive product lists shall also include products identified as market tests pursuant to 39 U.S.C. 3641 and nonpostal pursuant to 39 U.S.C. 404(e).

(c) The Mail Classification Schedule shall provide current price and classification information applicable to the products appearing on the market dominant and competitive product lists.

(d) Once established, the product lists and the Mail Classification Schedule may be modified subject to the procedures specified in this part.

§ 3020.2 Product lists.

(a) *Market Dominant Product List.* The market dominant product list shall be published in the **Federal Register** at Appendix A to subpart A of part 3020—Market Dominant Product List.

(b) *Competitive Product List.* The competitive product list shall be published in the **Federal Register** at Appendix B to subpart A of part 3020—Competitive Product List.

§ 3020.3 Notice of product list change.

(a) Whenever the Postal Regulatory Commission issues a final order that modifies the list of products in the market dominant category or the competitive category, it shall cause notice of such change to be published in the **Federal Register**.

(b) Notice shall be submitted to the **Federal Register** for publication within 6 months of the issue date of the applicable final order that affects the change.

(c) Modifications pending publication in the **Federal Register** are effective immediately upon written direction from the Postal Regulatory Commission.

(d) The **Federal Register** document shall:

(1) Identify modifications to the current list of market dominant products and the current list of competitive products; and

(2) Indicate how and when the previous product lists have been modified.

§ 3020.4 Mail Classification Schedule.

(a) The Postal Regulatory Commission shall publish a Mail Classification Schedule (including both current and previous versions) on its Web site at *http://www.prc.gov.* Copies of the Mail Classification Schedule also shall be available during regular business hours for reference and public inspection at the Postal Regulatory Commission located at 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001.

(b) The Mail Classification Schedule shall include, but shall not be limited to:

(1) Front matter, including:

(i) A cover page identifying the title of the document as the Mail Classification Schedule, the source of the document as the Postal Regulatory Commission (including Commission seal), and the publication date;

(ii) A table of contents;

(iii) A table specifying the revision history of the Mail Classification Schedule; and

(iv) A table identifying Postal Service trademarks; and

(2) Information concerning market dominant products, including:

(i) A copy of the Market Dominant Product List;

(ii) Descriptions of each market dominant product organized by the class of product, including:

(A) Where applicable, the general characteristics, size and weight limitations, minimum volume requirements, price categories, and available optional features of each market dominant product;

(B) A schedule listing the rates and fees for each market dominant product;

(C) Where applicable, the identification of a product as a special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(D) Where applicable, the identification of a product as an experimental product undergoing a market test; and

(E) Where applicable, the identification of a product as a nonpostal product; and

(3) Information concerning competitive products, including:

(i) A copy of the competitive product list; and

(ii) Descriptions of each competitive product, including:

(A) Where applicable, the general characteristics, size and weight limitations, minimum volume requirements, price categories, and available optional features of each competitive product;

(B) A schedule listing the current rates and fees for each competitive product of general applicability;

(C) The identification of each product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3) for competitive products;

(D) Where applicable, the identification of a product as an experimental product undergoing a market test; and

(E) Where applicable, the identification of a product as a nonpostal product; and

(4) A glossary of terms and conditions; and

(5) A list of country codes for international mail prices.

§ 3020.5 Modifications to the Mail Classification Schedule.

(a) Whenever the Postal Regulatory Commission issues a final order that modifies the Mail Classification Schedule, it shall update the Mail Classification Schedule appearing on its Web site at *http://www.prc.gov* in accordance with paragraph (b) of this section.

(b) Modification to the Mail Classification Schedule shall be incorporated within 3 months of the issue date of the final order.

(c) Modifications pending incorporation into the Mail Classification Schedule are effective immediately upon written direction from the Postal Regulatory Commission.

Appendix A to Subpart A of Part 3020—Market Dominant Product List

(An asterisk (*) indicates an organizational group, not a Postal Service product.)

First-Class Mail *
  Single-Piece Letters/Postcards
  Presorted Letters/Postcards
  Flats
  Parcels
  Outbound Single-Piece First-Class Mail International
  Inbound Letter Post
Standard Mail (Commercial and Nonprofit) *
  High Density and Saturation Letters
  High Density and Saturation Flats/Parcels
  Carrier Route

Letters
Flats
Parcels
Every Door Direct Mail—Retail
Periodicals *
In-County Periodicals
Outside County Periodicals
Package Services *
Alaska Bypass Service
Bound Printed Matter Flats
Bound Printed Matter Parcels
Media Mail/Library Mail
Special Services *
Ancillary Services
International Ancillary Services
Address Management Services
Caller Service
Credit Card Authentication
International Reply Coupon Service
International Business Reply Mail Service
Money Orders
Post Office Box Service
Customized Postage
Stamp Fulfillment Services
Negotiated Service Agreements *
Domestic *
PHI Acquisitions, Inc. Negotiated Service Agreement
International *
Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1
Inbound Market Dominant Exprés Service Agreement 1
Nonpostal Services *
Alliances with the Private Sector to Defray Cost of Key Postal Functions
Philatelic Sales
Market Tests *

Appendix B to Subpart A of Part 3020—Competitive Product List

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

Domestic Products *
Priority Mail Express
Priority Mail
Parcel Select
Parcel Return Service
First-Class Package Service
Retail Ground
International Products *
Outbound International Expedited Services
Inbound Parcel Post (at UPU rates)
Outbound Priority Mail International
International Priority Airmail (IPA)
International Surface Air List (ISAL)
International Direct Sacks—M-Bags
Outbound Single-Piece First-Class Package International Service
Negotiated Service Agreements *
Domestic *
Priority Mail Express Contract 8
Priority Mail Express Contract 15
Priority Mail Express Contract 16
Priority Mail Express Contract 17
Priority Mail Express Contract 18
Priority Mail Express Contract 19
Priority Mail Express Contract 20
Priority Mail Express Contract 21
Priority Mail Express Contract 22
Priority Mail Express Contract 23
Priority Mail Express Contract 24
Priority Mail Express Contract 25
Priority Mail Express Contract 26
Priority Mail Express Contract 27
Priority Mail Express Contract 28
Priority Mail Express Contract 29
Priority Mail Express Contract 30
Priority Mail Express Contract 31
Priority Mail Express Contract 32
Priority Mail Express Contract 33
Priority Mail Express Contract 34
Priority Mail Express Contract 35
Parcel Return Service Contract 5
Parcel Return Service Contract 6
Parcel Return Service Contract 7
Parcel Return Service Contract 8
Parcel Return Service Contract 9
Parcel Return Service Contract 10
Priority Mail Contract 24
Priority Mail Contract 29
Priority Mail Contract 56
Priority Mail Contract 57
Priority Mail Contract 58
Priority Mail Contract 59
Priority Mail Contract 60
Priority Mail Contract 61
Priority Mail Contract 62
Priority Mail Contract 63
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  - Priority Mail Contract 194
  - Priority Mail Contract 195
  - Priority Mail Contract 196
  - Priority Mail Contract 197
  - Priority Mail Contract 198
  - Priority Mail Contract 199
  - Priority Mail Contract 200
  - Priority Mail Contract 201
  - Priority Mail Contract 202
  - Priority Mail Contract 203
  - Priority Mail Express & Priority Mail Contract 10
  - Priority Mail Express & Priority Mail Contract 12
  - Priority Mail Express & Priority Mail Contract 13
  - Priority Mail Express & Priority Mail Contract 14
  - Priority Mail Express & Priority Mail Contract 16
  - Priority Mail Express & Priority Mail Contract 17
  - Priority Mail Express & Priority Mail Contract 18
  - Priority Mail Express & Priority Mail Contract 19
  - Priority Mail Express & Priority Mail Contract 20
  - Priority Mail Express & Priority Mail Contract 21
  - Priority Mail Express & Priority Mail Contract 22
  - Priority Mail Express & Priority Mail Contract 23
  - Priority Mail Express & Priority Mail Contract 24
  - Priority Mail Express & Priority Mail Contract 25
  - Priority Mail Express & Priority Mail Contract 26
  - Priority Mail Express & Priority Mail Contract 27
  - Priority Mail Express & Priority Mail Contract 28
  - Parcel Select & Parcel Return Service Contract 3
  - Parcel Select & Parcel Return Service Contract 5
  - Parcel Select Contract 2
  - Parcel Select Contract 5
  - Parcel Select Contract 7
  - Parcel Select Contract 8
  - Parcel Select Contract 9
  - Parcel Select Contract 10
  - Parcel Select Contract 11
  - Parcel Select Contract 12
  - Parcel Select Contract 13
  - Parcel Select Contract 14
  - Priority Mail—Non-Published Rates
  - Priority Mail—Non-Published Rates 1
  - First-Class Package Service Contract 35
  - First-Class Package Service Contract 36
  - First-Class Package Service Contract 37
  - First-Class Package Service Contract 38
  - First-Class Package Service Contract 39
  - First-Class Package Service Contract 40
  - First-Class Package Service Contract 41
  - First-Class Package Service Contract 42
  - First-Class Package Service Contract 43
  - First-Class Package Service Contract 44
  - First-Class Package Service Contract 45
  - First-Class Package Service Contract 46
  - First-Class Package Service Contract 47
  - Priority Mail Express, Priority Mail & First-Class Package Service Contract 2
  - Priority Mail Express, Priority Mail & First-Class Package Service Contract 3
  - Priority Mail Express, Priority Mail & First-Class Package Service Contract 4
  - Priority Mail Express, Priority Mail & First-Class Package Service Contract 5
  - Priority Mail Express, Priority Mail & First-Class Package Service Contract 6
  - Priority Mail Express, Priority Mail & First-Class Package Service Contract 7
  - Priority Mail Express, Priority Mail & First-Class Package Service Contract 8
  - Priority Mail Express, Priority Mail & First-Class Package Service Contract 9
  - Priority Mail & First-Class Package Service Contract 2
  - Priority Mail & First-Class Package Service Contract 3
  - Priority Mail & First-Class Package Service Contract 4
  - Priority Mail & First-Class Package Service Contract 5
  - Priority Mail & First-Class Package Service Contract 6
  - Priority Mail & First-Class Package Service Contract 7
  - Priority Mail & First-Class Package Service Contract 8
  - Priority Mail & First-Class Package Service Contract 9
  - Priority Mail & First-Class Package Service Contract 10
  - Priority Mail & First-Class Package Service Contract 11
  - Priority Mail & First-Class Package Service Contract 12
  - Priority Mail & First-Class Package Service Contract 13
  - Priority Mail & First-Class Package Service Contract 14
  - Priority Mail & First-Class Package Service Contract 15
  - Priority Mail & First-Class Package Service Contract 16
  - Priority Mail & Parcel Select Contract 1
- Outbound International *
  - Global Expedited Package Services (GEPS) Contracts
  - GEPS 3
  - Global Bulk Economy (GBE) Contracts
  - Global Plus Contracts
  - Global Plus 1C
  - Global Plus 2C
  - Global Reseller Expedited Package Contracts
  - Global Reseller Expedited Package Services 1
  - Global Reseller Expedited Package Services 2
  - Global Reseller Expedited Package Services 3
  - Global Reseller Expedited Package Services 4
  - Global Expedited Package Services (GEPS)—Non-Published Rates
  - Global Expedited Package Services (GEPS)—Non-Published Rates 2
  - Global Expedited Package Services (GEPS)—Non-Published Rates 3
  - Global Expedited Package Services (GEPS)—Non-Published Rates 4
  - Global Expedited Package Services (GEPS)—Non-Published Rates 5
  - Global Expedited Package Services (GEPS)—Non-Published Rates 6
  - Global Expedited Package Services (GEPS)—Non-Published Rates 7
  - Global Expedited Package Services (GEPS)—Non-Published Rates 8
  - Global Expedited Package Services (GEPS)—Non-Published Rates 9
  - Global Expedited Package Services (GEPS)—Non-Published Rates 10
  - Priority Mail International Regional Rate Boxes—Non-Published Rates
  - Outbound Competitive International Merchandise Return Service Agreement with Royal Mail Group, Ltd.
  - Priority Mail International Regional Rate Boxes Contracts
  - Priority Mail International Regional Rate Boxes Contracts 1
  - Competitive International Merchandise Return Service Agreements with Foreign Postal Operators
  - Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 1
  - Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 2
- Inbound International*
  - International Business Reply Service (IBRS) Competitive Contracts
  - International Business Reply Service Competitive Contract 1
  - International Business Reply Service Competitive Contract 3
  - Inbound Direct Entry Contracts with Customers
  - Inbound Direct Entry Contracts with Foreign Postal Administrations
  - Inbound Direct Entry Contracts with Foreign Postal Administrations
  - Inbound Direct Entry Contracts with Foreign Postal Administrations 1
  - Inbound EMS
  - Inbound EMS 2
  - Inbound Air Parcel Post (at non-UPU rates)
  - Royal Mail Group Inbound Air Parcel Post Agreement
  - Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1
- Special Services*
  - Address Enhancement Services
  - Greeting Cards, Gift Cards, and Stationery
  - International Ancillary Services
  - International Money Transfer Service—Outbound
  - International Money Transfer Service—Inbound
  - Premium Forwarding Service
  - Shipping and Mailing Supplies
  - Post Office Box Service
  - Competitive Ancillary Services
- Nonpostal Services*
  - Advertising
  - Licensing of Intellectual Property other than Officially Licensed Retail Products (OLRP)
  - Mail Service Promotion
  - Officially Licensed Retail Products (OLRP)
  - Passport Photo Service
  - Photocopying Service
  - Rental, Leasing, Licensing or other Non-Sale Disposition of Tangible Property
  - Training Facilities and Related Services
  - USPS Electronic Postmark (EPM) Program
- Market Tests*
  - International Merchandise Return Service (IMRS)—Non-Published Rates
  - Customized Delivery

Subpart B—Requests Initiated by the Postal Service To Modify the Product Lists

■ 3. Revise the heading of subpart B to read as set forth above.

■ 4. Revise § 3020.30 to read as follows:

§ 3020.30 General.

The Postal Service, by filing a request with the Commission, may propose a modification to the market dominant product list or the competitive product list. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or moving a product from one list to the other list.

Subpart C—Requests Initiated by Users of the Mail to Modify the Product Lists

■ 5. Revise the heading of subpart C to read as set forth above.

■ 6. Revise § 3020.50 to read as follows:

§ 3020.50 General.

Users of the mail, by filing a request with the Commission, may propose a modification to the market dominant product list or the competitive product list. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or transferring a product from one list to the other list.

Subpart D—Proposal of the Commission to Modify the Product Lists

■ 7. Revise the heading of subpart D to read as set forth above.

Subpart D—Proposal of the Commission to Modify the Product Lists

■ 8. Revise § 3020.70 to read as follows:

§ 3020.70 General.

The Commission, of its own initiative, may propose a modification to the market dominant product list or the competitive product list. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or transferring a product from one list to the other list.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–14171 Filed 6–14–16; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0969; FRL–9947–71–Region 5]

Indiana; Ohio; Disapproval of Interstate Transport Requirements for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is disapproving elements of State Implementation Plan (SIP) submissions from Indiana and Ohio regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program is adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements concerning interstate transport provisions, for which Ohio and Indiana made SIP submissions that, among other things, certified that their existing SIPs were sufficient to meet the interstate transport infrastructure SIP requirements for the 2008 ozone NAAQS.

DATES: This final rule is effective on July 15, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0969. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or please contact the person identified in the "For Further Information Contact" section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of these SIP submissions?
II. What action did EPA propose on the SIP submissions?
III. What is our response to comments received on the proposed rulemaking?
IV. What action is EPA taking?
V. Statutory and Executive Order Reviews.

I. What is the background of these SIP submissions?

This rulemaking addresses CAA section 110(a)(2)(D)(i) requirements in two infrastructure SIP submissions addressing the applicable infrastructure requirements with respect to the 2008 ozone NAAQS: A December 12, 2011, submission from the Indiana Department of Environmental Management (IDEM), clarified in a May 24, 2012, letter; and a December 27, 2012, submission from the Ohio Environmental Protection Agency (Ohio EPA).

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address. EPA commonly refers to such state plans as "infrastructure SIPs."

This rulemaking takes action on three CAA section 110(a)(2)(D)(i) requirements of these submissions. In particular, section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS ("prong one"), or interfering with maintenance of the NAAQS ("prong two"), by any another state. Section 110(a)(2)(D)(i)(II) requires that infrastructure SIPs include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality ("prong three") and to protect visibility ("prong four") in another state. This rulemaking addresses prongs one, two, and four of this CAA section. The majority of the other infrastructure elements were approved in rulemakings on April 29, 2015 (80 FR 23713) for Indiana; and October 16, 2014 (79 FR 62019) for Ohio.

II. What action did EPA propose on the SIP submissions?

The proposed rulemaking associated with today's final action was published on March 16, 2016 (81 FR 14025).

In that action, EPA proposed to disapprove the portions of Ohio's December 27, 2012 SIP submission addressing prongs one, two, and four of CAA section 110(a)(2)(D)(i). In proposing to disapprove the SIP submission as to prongs one and two, EPA noted several deficiencies in Ohio's submission: (1) Ohio's SIP submission lacks any technical analysis evaluating or demonstrating whether emissions in each state impact air quality in other states with respect to the 2008 ozone NAAQS; (2) Ohio's SIP does not demonstrate how certain state programs and rules provide sufficient controls on emissions to address interstate transport for the 2008 ozone NAAQS; (3) Ohio's submission relied on the state's implementation of the Clean Air Interstate Rule (CAIR), which was not designed to address interstate transport with respect to the 2008 ozone standard and which is no longer being implemented; and (4) EPA recently released technical data which contradicts the state's conclusion that its SIP contained adequate provisions to address interstate transport with respect to the 2008 ozone NAAQS.

In proposing to disapprove the Ohio SIP submission as to prong four, EPA explained that there are two ways in which a state may satisfy its visibility transport obligations: (1) A fully approved regional haze SIP, or (2) a demonstration that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility. Ohio's SIP submission relied on the State's regional haze SIP to satisfy its visibility transport requirements under CAA section 110(a)(2)(i)(II). However, Ohio does not have a fully approved regional haze SIP in place because its obligations are satisfied in part by EPA's Cross-State Air Pollution Rule (CSAPR) based regional haze Federal Implementation Plan (FIP). Ohio also did not provide an alternate demonstration that its emissions would not interfere with plans to protect visibility in other states.

EPA also proposed to disapprove the portions of Indiana's December 12, 2011 SIP submission addressing prongs one, two, and four of CAA section 110(a)(2)(D)(i). In proposing to disapprove the SIP submission as to prongs one and two, EPA noted several deficiencies in Ohio's submission: (1) Indiana's SIP submission lacks any technical analysis evaluating or demonstrating whether emissions in each state impact air quality in other states with respect to the 2008 ozone NAAQS; (2) Indiana's SIP submission relied on the state's participation on the CSAPR trading program, which was not designed to address interstate transport with respect to the 2008 ozone standard; (3) the state failed to cite any other rules currently being implemented by the state that are part of Indiana's approved SIP or that are being submitted as part of the state's SIP submission to address interstate transport for the 2008 ozone NAAQS; and (4) EPA recently released technical data which contradicts the state's conclusion that its SIP contained adequate provisions to address interstate transport with respect to the 2008 ozone NAAQS.

In proposing to disapprove the Indiana SIP submission as to prong four, EPA noted that Indiana's SIP submission relies on its regional haze SIP to satisfy the state's visibility transport obligations. However, Indiana does not have a fully approved regional haze SIP in place because its obligations are satisfied in part by EPA's CSAPR-based regional haze FIP. Indiana also did not provide an alternate demonstration that its emissions would not interfere with plans to protect visibility in other states.

III. What is our response to comments received on the proposed rulemaking?

EPA received four comments during the comment period, which ended on April 15, 2016. A synopsis of the comments contained in these letters and EPA's responses, are provided below.

A. Comments on the Ohio Disapproval for Prongs One and Two

Comment 1: Ohio EPA commented that the proposed disapproval focuses on the state's duty to make a SIP submission addressing CAA section 110(a)(2)(D), but contends that EPA has historically taken the lead in addressing transported emissions, citing several prior EPA rulemakings including the Oxides of Nitrogen (NO_X) SIP Call, CAIR, and CSAPR. The state noted that meeting the bar that EPA has set with these rulemakings would be "extremely resource intensive and require unprecedented multi-state collaboration," and is therefore best suited for EPA. Ohio EPA alleged that EPA's actions to develop these regulations are too late for the states to incorporate into their SIPs.

The state further commented that EPA has provided insufficient guidance to states addressing the requirements of section 110(a)(2)(D) in their SIPs, and guidance that is provided is often ill-timed. Ohio EPA gave the example of guidance for the 2006 fine particulate matter ($PM_{2.5}$) NAAQS that was released on September 25, 2009, four days after SIPs addressing this standard were due, which stated that the states could not rely on the CAIR. The state also noted that for the 2008 ozone standard, SIP submissions were due on March 12, 2011, and EPA guidance issued two years later on September 13, 2013 did not address section 110(a)(2)(D)(i)(I). The state also commented that under cooperative federalism, EPA should not only set standards, but provided the necessary information and technical assistance for the state to fulfil their CAA obligations. Ohio EPA commented that the proposal did not acknowledge the continued efforts to meet EPA requirements on a timely basis and alleged that they were being punished with a disapproval because of a consent decree in which they were not a party. The state contends that EPA engages in secretive "sue and settle" arrangements where EPA agrees to issue disapprovals that commit the states to actions or timeframes that are unreasonable. The state also contends that EPA must disapprove Ohio's SIP submission in order to impose a FIP. The state proposed that a better course of action under cooperative federalism would have been for EPA to have provided the necessary information and allowed the state the necessary time to submit an approvable SIP.

Response 1: While EPA issued several previous Federal rulemakings addressing interstate transport obligations in eastern states with respect to ozone and fine particulate matter, the Supreme Court confirmed that the states have the first obligation to prepare and submit state plans that prohibit the appropriate levels of emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in other states. In *EPA* v. *EME Homer City Generation, L.P.*, the Supreme Court clearly held that "nothing in the statute places EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligations." 134 S. Ct. 1584, 1601 (2014).[1] While EPA has taken a different approach in some prior rulemakings by providing states with an opportunity to submit a SIP after EPA quantified the states' budgets (*e.g.*, the NO_X SIP Call and CAIR), the statute does not require such an approach.

While EPA did not provide specific guidance regarding how states could satisfy their statutory obligation with respect to CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS, EPA did provide information to assist states with developing or supplementing their SIP submissions. On January 22, 2015, EPA issued a memorandum providing preliminary modeling information regarding potential downwind air quality problems and levels of upwind state contributions. *See* Memorandum from Stephen D. Page to Regional Air Division Directors, Regions 1–10, "Information on the Interstate Transport 'Good Neighbor' Provision for the 2008 Ozone [NAAQS] under [CAA] Section 110(a)(2)(D)(i)(I)" (Jan. 22, 2015). As noted at proposal, EPA also provided updated modeling and contribution information in its August 4, 2015 Notice of Data Availability. 80 FR 46271. While Ohio's December 27, 2012 SIP was submitted prior to this information being provided, the state did not attempt to revise or supplement its SIP submission to address this information.

Moreover, EPA does not agree that the states needed formal guidance to understand that it was inappropriate to rely on CAIR for purposes of satisfying the state's interstate transport obligations with respect to the 2008 ozone NAAQS. As noted earlier, CAIR was designed to address interstate transport with respect to the 1997 ozone NAAQS, not the more stringent 2008 ozone NAAQS, and in any event the rule is no longer being implemented by the states or EPA. More importantly, in *North Carolina* v. *EPA*, the D.C. Circuit held that CAIR was "fundamentally flawed," 531 F.3d 896, 929 (D.C. Cir. 2008), in part because CAIR did not satisfy the statutory requirement to "achieve[] something measurable towards the goal of prohibiting sources 'within the State' from contributing to nonattainment or interfering with maintenance in 'any other State.'" *Id.* at 908. Accordingly, the D.C. Circuit held in *EME Homer City Generation, L.P.* v. *EPA*, "when our decision in *North Carolina* deemed CAIR to be an invalid effort to implement the requirements of the good neighbor provision, that ruling meant that the initial approval of the CAIR SIPs was in error at the time it was done." 795 F.3d 118, 133 (2015). For these reasons, EPA cannot now approve an interstate transport SIP addressing any NAAQS based on the state's participation in CAIR.

Finally, EPA disagrees that either the litigation regarding EPA's deadline to act on Ohio's SIP submission or EPA's proposed action to update CSAPR to address the 2008 ozone standard (CSAPR Update) have dictated the substance of EPA's action on Ohio's SIP with respect to prongs one and two. CAA section 110(k)(2) requires EPA to act on a state's SIP submission within one year after the submission is determined to be complete. Therefore, EPA's statutory obligation to act on Ohio's December 27, 2012 SIP submission was overdue. While EPA did enter into a consent decree with litigants in *Sierra Club* v. *McCarthy*, No. 4:14-cv-5091–YGR (N.D. Cal.), which raised claims regarding EPA's alleged failure to fulfill its mandatory duty to take action on Ohio's SIP under CAA section 110(k)(2), that agreement governs only the timetable on which EPA must act on the state's SIP submissions under CAA section 110(k)(2) and not the substance of EPA's action. As described earlier, EPA has evaluated Ohio's SIP submission on its merits and found that it is deficient for purposes of addressing the state's obligation pursuant to CAA section 110(a)(2)(D)(i)(I).

Comment 2: A commenter cited comments that were submitted on the docket for the CSAPR Update rulemaking because the modeling used to support that rule is also being used in the disapproval Ohio's interstate transport SIP. The commenter stated that "the comments detail legal problems and technical flaws with the modeling" and asserted that EPA should not have acted on Ohio's SIP submission until the CSAPR Update was finalized and EPA had responded to the comments. The commenter disagreed with the need for EPA to take action on the submission at this time and stated that EPA should have issued a SIP call or asked the state for a supplemental submission instead of disapproving the December 27, 2012 SIP submission which was "in accordance with what was required at the time". The commenter noted that EPA's analysis was completed three years after the state's submission.

Response 2: EPA disagrees with the commenter's conclusion that EPA is disapproving Ohio's SIP submission addressing prongs one and two based primarily on the modeling conducted to support the proposed CSAPR Update rulemaking. As noted earlier, states bear the primary responsibility to demonstrate that their plans contain adequate provisions to address the statutory interstate transport provisions, specifically to demonstrate that the plan properly prohibits emissions that will significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states. As described in the proposal and earlier in this notice, EPA has identified several ways in which Ohio's SIP submission fails to fulfill this obligation. In particular, EPA is disapproving Ohio's submission for its reliance on CAIR, which is legally invalid, and the lack of state rules identified in its submission that are sufficient to prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the standard in other states.

While EPA cited the modeling conducted for the CSAPR Update as additional evidence that Ohio may significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states, we did not propose to make a specific finding of contribution or to quantify any specific emissions reduction obligation. Rather, the evaluation of whether emissions from Ohio significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS downwind, and if so what reductions are necessary to address that contribution, is being conducted in the context of the CSAPR Update rulemaking. Accordingly, EPA will consider timely-submitted comments regarding EPA's air quality modeling and various associated legal and policy decisions in finalizing that rulemaking. Moreover, it is inappropriate for the commenter to merely cite to or attach comments prepared for another rulemaking without identifying which portions of those comments are pertinent to this action. Without further explanation, EPA has no obligation to address comments prepared for the purpose of the CSAPR Update in the context of this rulemaking.

EPA notes that the technical data discussed at proposal with respect to Ohio's potential contribution to downwind air quality problems is consistent with modeling previously conducted for trading programs addressing interstate ozone transport such as CAIR (70 FR 25162), CSAPR (76 FR 48208), and the NOx SIP Call (63 FR 57356) showing that Ohio is frequently linked to downwind receptors. The modeling conducted to support the proposed CSAPR Update is the most recent technical information available to the Agency which still shows such linkages. Even absent this modeling data, Ohio's SIP submission is inadequate to address prongs one and two of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS.

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[1] "Nothing in the Act differentiates the Good Neighbor Provision from the several other matters a State must address in its SIP. Rather, the statute speaks without reservation: Once a NAAQS has been issued, a State 'shall' propose a SIP within three years, § 7410(a)(1), and that SIP 'shall' include, among other components, provisions adequate to satisfy the Good Neighbor Provision, § 7410(a)(2)." *EPA* v. *EME Homer City Generation, L.P.*, 134 S. Ct. at 1600.

Comment 3: Ohio EPA also attached comments that were submitted for the proposal to update CSAPR to address the 2008 ozone NAAQS because, the state explained, the modeling is also being used to disapprove Ohio's SIP as to prongs one and two. The state commented that the attached comments point out "significant errors and concerns in U.S. EPA's analyses regarding the [Notice of Data Availability] and transport updates" and that "it is ill-timed and erroneous for U.S. EPA to use these analyses as evidence that Ohio has not addressed its transport obligations."

Response 3: While EPA cited the modeling conducted for the CSAPR Update as additional evidence that Ohio may significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states, we did not propose to make a specific finding of contribution or to quantify any specific emissions reduction obligation. Rather, the evaluation of whether emissions from Ohio significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS downwind, and if so what reductions are necessary to address that contribution, is being conducted in the context of the CSAPR Update rulemaking. Accordingly, EPA will consider timely-submitted comments regarding EPA's air quality modeling and various associated legal and policy decisions in finalizing that rulemaking. Moreover, it is inappropriate for the commenter to merely cite to or attach comments prepared for another rulemaking without identifying which portions of those comments are pertinent to this action. Without further explanation, EPA has no obligation to address comments prepared for the purpose of the CSAPR Update in the context of this rulemaking.

B. Comments on the Indiana Disapproval for Prongs One and Two

Comment 4: The commenter gave a summary of the regulatory history of CSAPR and the overlapping timeline of the IDEM submission. The commenter alleged that "EPA was uncertain about the scope of the air transport law, and therefore cannot be certain about its proposed disapproval of the Indiana infrastructure SIP."

Response 4: In evaluating Indiana's SIP submission with respect to prongs one and two of the interstate transport provisions of the statute, EPA has identified several clear deficiencies in the state's analysis. In particular, EPA noted that the state relied on participation in CSAPR, which does not address interstate transport with respect to the 2008 ozone NAAQS, and failed to otherwise provide any technical analysis to support its conclusion that the state had satisfied its statutory obligation. The commenter has identified no legal uncertainty underlying these bases for EPA's disapproval of Indiana's SIP.

Comment 5: The commenter cites to a comment from Connecticut on an older rulemaking in which Connecticut requests further reductions of upwind emissions to address nonattainment concerns in Connecticut. The commenter gave an overview of the Reasonably Available Control Technology (RACT) plan developed by Connecticut looking at feasible local controls to address air quality in the nonattainment area including Connecticut. The commenter concluded that because there are further local controls available to address the nonattainment area, and any attempt to impose reduction obligations on upwind states such as Indiana without addressing these controls first would result in over-control by the upwind states.

Response 5: This action is not determining what, if any, emission reductions sources in Indiana may need to achieve in order to address the state's interstate transport obligation with respect to the 2008 ozone NAAQS. Instead, EPA is evaluating the state's interstate transport SIP to determine whether the current submission satisfies the statutory obligations at CAA section 110(a)(2)(D)(i)(I). As noted earlier, Indiana's SIP contains several deficiencies that justify EPA's decision to finalize disapproval as to prongs one and two transport, as Indiana has failed to provide an adequate technical analysis demonstrating that the state's current SIP contains sufficient provisions to properly address interstate transport with respect to the 2008 ozone NAAQS. Moreover, besides Connecticut, EPA's most recent technical analysis shows that emissions from Indiana contribute to projected air quality problems in Wisconsin, Kentucky, Maryland, Michigan, New Jersey, New York, Ohio, and Pennsylvania.

Comment 6: A commenter alleged that "EPA propose[d] disapproval, and its disagreement with IDEM's submission, rests in great part on the modeling and technical data that was used to support the CSAPR Update" and that a contrary view suggests "that there is no basis to conclude that Indiana would be expected to significantly contribute to the nonattainment of or interfere with the maintenance of the 2008 ozone NAAQS in 2017."

The following comments pertain to modeling conducted to support the proposed CSAPR Update and EPA's application of the modeling data in the proposed rule. The commenter first noted that a study prepared by Alpine Geophysics looked at ozone concentrations during a more recent time period. The comment alleged that the concentrations from this study were more appropriate because they reflected recent controls, economic factors, recent regulatory programs, and more consistent precipitation and temperature ranges. The commenter stated that using this data set resulted in all projected air quality problems (both nonattainment and maintenance receptors) being resolved in 2017 with the exception of those in Fairfield, Connecticut. The commenter notes that the proposed rulemaking does not find Indiana to be a significant contributor to the Fairfield, Connecticut monitor.

The commenter also cited what they believe are legal and policy issues with the proposed CSAPR Update. The commenter alleged that EPA's reliance on modeled maximum design value for determining whether a state interferes with maintenance of the NAAQS downwind is inconsistent with the Supreme Court's 2014 decision, the D.C. Circuit's 2015 decision in the *EME Homer City* litigation, the CAA. The commenter contends that this interpretation of that statutory obligation would result in unnecessary over-control. The commenter also alleged that EPA's approach to addressing maintenance concerns is applied differently in transport than it is in the context of redesignations.

The commenter contends, based on the Alpine Geophysics report, that EPA inappropriately used grids in its modeling platform that include overwater receptors as well as land receptors, and further inappropriately selected to represent the monitor the highest concentration in the grid from an over the water location.

The commenter further alleged that EPA using the latest version of the

Integrated Planning Model would show great emissions reductions already in place therefore lowering projected concentrations in downwind states. The commenter also commented that that model did not include controls such as a Pennsylvania RACT rule and mobile source controls in the New England area that are needed to reduce concentrations at the Connecticut monitor. The commenter contended that EPA did not properly account for international emissions, and doing so would lead to the conclusion that Indiana is not contributing to the Connecticut monitor. The commenter concluded that using the alternate analysis by Alpine Geophysical eliminates attainment and maintenance issues at all the monitors except Connecticut and for the reasons summarized above, Indiana does not significantly contribute to that monitor.

Response 6: EPA disagrees with the commenter's conclusion that EPA is disapproving Indiana's SIP submission addressing prongs one and two based primarily on the modeling conducted to support the proposed CSAPR Update rulemaking. As noted earlier, states bear the primary responsibility to demonstrate that their plans contain adequate provisions to address the statutory interstate transport provisions, specifically to demonstrate that the plan properly prohibits emissions that will significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states. As described in the proposal and earlier in this notice, EPA has identified several ways in which Indiana's SIP submission fails to fulfill this obligation. In particular, EPA is disapproving Indiana's submission for its reliance on CSAPR, which does not currently address the 2008 ozone standard, and the submission's lack of identified state rules that are sufficient to prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the standard in other states.

While EPA cited the modeling conducted for the CSAPR Update as additional evidence that Indiana may significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states, we did not propose to make a specific finding of contribution or to quantify any specific emissions reduction obligation. Rather, the evaluation of whether emissions from Indiana significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS downwind, and if so what reductions are necessary to address that contribution, is being conducted in the context of the CSAPR Update rulemaking. Accordingly, EPA will consider comments timely submitted to the Agency regarding EPA's air quality modeling and various associated legal and policy decisions in finalizing that rulemaking. While EPA appreciates the information provided by the commenter regarding EPA's identification of downwind air quality problems and Indiana's potential contribution to those areas, these data do not undermine EPA's primary bases for disapproving Indiana's SIP with respect to prongs one and two of CAA section 110(a)(2)(D)(i)(I).

EPA notes that the technical data discussed at proposal with respect to Indiana's potential contribution to downwind air quality problems is consistent with modeling previously conducted for trading programs addressing interstate ozone transport such as CAIR (70 FR 25162), CSAPR (76 FR 48208), and the NO_X SIP Call (63 FR 57356) showing that Indiana is frequently linked to downwind receptors. The modeling conducted to support the proposed CSAPR Update is the most recent technical information available to the Agency which still shows such linkages. Even absent these modeling data, Indiana's SIP submission is inadequate to address prongs one and two of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS.

C. Comments on Both the Indiana and Ohio Disapprovals for Prongs One and Two

Comment 7: The Connecticut Department of Energy and Environmental Protection (DEEP) is supportive of the proposed disapprovals of Indiana and Ohio's SIP submissions addressing the prongs one and two transport obligations. DEEP encouraged EPA to finalize the disapproval quickly and propose and finalize a full transport remedy rather than waiting to couple the action with the 2015 ozone NAAQS. DEEP also encourages EPA to "describe the implications of the disapproval with respect to each state's good neighbor SIP obligations and the proposed partial remedy provided by the [CSAPR] Update," and DEEP supports action by Indiana and Ohio towards resolving outstanding SIP obligations.

Response 7: EPA is supportive of any actions taken by the states to resolve transport obligations. EPA will address further obligations for Ohio and Indiana in the final CSAPR Update rule.

D. Comments on Both the Indiana and Ohio Disapprovals for Prong Four

Comment 8: Both commenters on Indiana's submission and Ohio's submission stated that the visibility portion should be approved, because reliance on CAIR as better than Best Available Retrofit Technology (BART) for electric generating units (EGUs) was consistent with CAA requirements at the time of both submissions. One commenter also stated that since CAIR is better than BART has been replaced with CSAPR is better than BART in the form a FIP, the requirements have been fully addressed, and this transport prong should be fully approved. The other commenter asserts that if EPA decides to finalize the disapproval, EPA should clarify that no further action is needed because of the FIP in place showing that for Ohio EGUs, CSAPR meets the BART requirements for regional haze. Ohio EPA also disagreed with EPA's proposed disapproval of prong four, because there is a FIP in place that satisfies Ohio's obligations.

Response 8: Indiana and Ohio cannot rely on CAIR to satisfy their regional haze obligations, and by extension their prong four obligations, because neither the states nor EPA are currently implementing this program. Neither state has submitted an approvable regional haze SIP to replace its current reliance on CAIR; thus, both States have regional haze FIPs in place. However, as stated above, states cannot rely on FIPs to satisfy their prong four obligations. This is consistent with our approach for transport provisions and federally implemented PSD programs. EPA is not promulgating FIPs to address the states' prong four deficiencies in this action.

IV. What action is EPA taking?

EPA is disapproving a portion of Indiana's December 12, 2011 submission and Ohio's December 27, 2012 submission seeking to address the required infrastructure element under CAA section 110(a)(2)(D)(i) for the 2008 ozone NAAQS, specifically prongs one, two, and four. This disapproval triggers an obligation under CAA section 110(c) for EPA to promulgate a FIP no later than two years from the effective date of this disapproval, if EPA has not approved a SIP revision or revisions addressing the deficiencies identified in this action. This action is not tied to attainment planning requirements and therefore does not start any sanction clocks.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This rule does not impose an information collection burden under the provisions of the PRA.

C. Regulatory Flexibility Act (RFA)

The Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action merely proposes to disapprove state law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children because it proposes to disapprove a state rule.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 15, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: June 3, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 52.770 the table in paragraph (e) is amended by revising the entry for "Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS". The amended text reads as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* *	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS.	12/12/2011	6/15/2016, [insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).
* *	*	*	* * *

■ 3. In § 52.1870 the table in paragraph (e) is amended by revising the entry for "Section 110(a)(2) infrastructure requirements for the 2008 Ozone NAAQS". The amended text reads as follows:

§ 52.1870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
* * * * * * *				
Section 110(a)(2) infrastructure requirements for the 2008 ozone NAAQS.	Statewide	12/27/2012	6/15/2016, [insert **Federal Register** citation].	Addresses the following CAA elements: 110(a)(2) (A) to (H) and (J) to (M).
* * * * * * *				

[FR Doc. 2016–14103 Filed 6–14–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[EPA–R02–OAR–2016–0316; FRL–9947–77–Region 2]

Finding of Failure To Submit a State Implementation Plan; New Jersey; Interstate Transport Requirements for 2008 8-Hour National Ambient Air Quality Standards for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action finding that New Jersey has failed to submit an infrastructure State Implementation Plan (SIP) revision to satisfy certain interstate transport requirements of the Clean Air Act (CAA) with respect to the 2008 8-hour ozone national ambient air quality standard (NAAQS). Specifically, these requirements pertain to the obligation to prohibit emissions which significantly contribute to nonattainment, or interfere with maintenance, of the 2008 8-hour ozone NAAQS in other states. This finding of failure to submit establishes a 2-year deadline for the EPA to promulgate a Federal Implementation Plan (FIP) to address the interstate transport SIP requirements pertaining to the state's significant contribution to nonattainment and interference with maintenance of the 2008 ozone NAAQS in other states unless, prior to the EPA promulgating a FIP, the state submits, and the EPA approves, a SIP that meets these requirements.

DATES: This rule is effective on July 15, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2016–0316. All documents in the docket are listed on the *www.regulations.gov* Web site.

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3702, or by email at *Fradkin.Kenneth@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedures Act, 5 United States Code (U.S.C.) 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submittals, or incomplete submittals, to meet the requirement by the statutory date. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

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I. Background
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I. Background

Section 110(a) of the CAA imposes an obligation upon states to submit SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years following the promulgation of that NAAQS. Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. The EPA refers to this type of SIP submission as the "infrastructure" SIP because the SIP ensures that states can implement, maintain and enforce the air standards. Within these requirements, section 110(a)(2)(D)(i) contains requirements to address interstate transport of NAAQS pollutants. A SIP revision submitted for this sub-section is referred to as an "interstate transport SIP." In turn, section 110(a)(2)(D)(i)(I) requires that such a plan contain adequate provisions to prohibit emissions from the state that will contribute significantly to nonattainment of the NAAQS in any other state ("prong 1") or interfere with maintenance of the NAAQS in any other state ("prong 2"). Interstate transport prongs 1 and 2, also called the "good neighbor" provisions, are the requirements relevant to this findings notice.

Pursuant to CAA section 110(k)(1)(B), the EPA must determine no later than 6 months after the date by which a state is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established in CAA section 110(k)(1)(A). The EPA refers to the determination that a state has not submitted a SIP submission that meets the minimum completeness criteria as a "finding of failure to submit." If the EPA finds a state has failed to submit a SIP to meet its statutory obligation to address 110(a)(2)(D)(i)(I), pursuant to section 110(c)(1) the EPA has not only the authority, but the obligation, to promulgate a FIP within 2 years to address the CAA requirement. This finding therefore starts a 2-year clock for promulgation by the EPA of a FIP, in accordance with CAA section 110(c)(1), unless prior to such promulgation the state submits, and the EPA approves, a submittal from the state to meet the requirements of CAA section 110(a)(2)(D)(i)(I). The EPA notes this action does not start a mandatory sanctions clock pursuant to CAA section 179 because this finding of failure to submit does not pertain to a part D plan for nonattainment areas required under CAA section 110(a)(2)(I) or a SIP call pursuant to CAA section 110(k)(5).

On March 12, 2008, the EPA strengthened the NAAQS for ozone. The EPA revised the 8-hour primary ozone standard from 0.08 parts per millions (ppm) to 0.075 ppm. The EPA also revised the secondary 8-hour standard to the level of 0.075 ppm making it identical to the revised primary standard. Infrastructure SIPs addressing the revised standard, including the interstate transport requirements, were due March 12, 2011.

On October 17, 2014, New Jersey submitted a multi-pollutant infrastructure SIP revision for 2008 Ozone, 2010 Sulfur Dioxide, 2010 Nitrogen Dioxide, 2008 Lead, 2011 Carbon Monoxide, and the 2012 $PM_{2.5}$ (Fine Particles) NAAQS. New Jersey addressed the "good neighbor" provision for the 2008 Ozone NAAQS in their submission.

On July 13, 2015, the EPA published a rule[1] finding that 24 states failed to submit complete SIPs that addressed the "good neighbor" provision for the 2008 Ozone NAAQS. See 80 FR 39961, (July 13, 2015). The finding action triggered a 2-year clock for the EPA to issue FIPs to address the "good neighbor" requirements for those states by August 12, 2017. Prior to issuance of the finding action, New Jersey made a submission addressing the "good neighbor" provision for the 2008 Ozone NAAQS on October 17, 2014; therefore, the state was not included in the EPA's July 2015 finding notice. Following New Jersey's submittal of their infrastructure SIP and the EPA's July 2015 finding notice, the EPA proposed a rule on November 16, 2015[2] to address the "good neighbor" requirements for the 2008 Ozone NAAQS. The rule proposed to promulgate FIPs in 23 eastern states, including New Jersey, to reduce interstate ozone transport as to the 2008 ozone NAAQS. The EPA proposed to issue final FIPs only for those states that either failed to submit a SIP or for which the EPA disapproved a state's SIP addressing the "good neighbor" provision by the date the rule was finalized. The EPA expects to finalize the rule and respective FIPs, as applicable, later this year.

In a letter to the EPA dated March 30, 2016, New Jersey withdrew from EPA's consideration the "good neighbor" portion of its multi-pollutant infrastructure SIP as it relates to the 2008 ozone NAAQS. New Jersey stated that it was withdrawing that portion of its submission "in order not to delay the EPA's ability to implement the FIP on those upwind states that are significantly contributing to ozone levels in New Jersey and the other states within [New Jersey's] shared ozone nonattainment area." New Jersey stated that its decision to withdraw was based on a desire that EPA would "fully implement the FIP" proposed in 2016, and that it "reserve[d] the right to resubmit" the language of its original submission. The full letter can be found in the docket for this rulemaking.[3]

On the basis of New Jersey's March 30, 2016 withdrawal letter, New Jersey does not have a complete pending submittal addressing the "good neighbor" provision for the 2008 ozone NAAQS. The EPA is therefore making a finding that New Jersey has failed to submit a SIP revision to address the requirements of CAA sections 110(a)(2)(D)(i)(I) as to the 2008 ozone NAAQS.

II. Final Action

This action reflects the EPA's determination with respect to the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS for New Jersey, as discussed in section I of this findings notice. The EPA is making a finding of failure to submit for New Jersey for the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS. This finding starts a 2-year clock for promulgation by the EPA of a FIP after the effective date of this final rule, in accordance with section 110(c)(1), unless prior to such promulgation that New Jersey submits, and the EPA approves, a submittal that meets the requirements of CAA section 110(a)(2)(D)(i)(I) as to the 2008 ozone NAAQS. This finding of failure to submit does not impose sanctions, and does not set deadlines for imposing sanctions as described in section 179, because it does not pertain to the elements of a CAA title I, part D plan for nonattainment areas as required under section 110(a)(2)(I), and because this action is not a SIP call pursuant to section 110(k)(5).

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the Paperwork Reduction Act. This final rule does not establish any new information collection requirement apart from that already required by law.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the agency has invoked the APA "good cause" exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action implements mandates specifically and explicitly set forth in the CAA under section 110(a) without the exercise of any policy discretion by the EPA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This rule responds to the requirement in the CAA for states to submit SIPs under section 110(a) to address CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. No tribe is subject to the requirement to submit an implementation plan under section 110(a) within 3 years of promulgation of a new or revised NAAQS. Thus,

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[1] 80 FR 39961 (July 13, 2015) (effective August 12, 2015).

[2] See "Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS; Proposed Rules," 80 FR 75706 (December 3, 2015).

[3] Letter from Bob Martin, Commissioner, New Jersey Department of Environmental Protection to Judith Enck, Regional Administrator, U.S. EPA Region II, March 30, 2016.

Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment.

This notice is making a procedural finding that New Jersey has failed to submit a SIP to address CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. The EPA did not conduct an environmental analysis for this rule because this rule would not directly affect the air emissions of particular sources. Because this rule will not directly affect the air emissions of particular sources, it does not affect the level of protection provided to human health or the environment. Therefore, this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in the **SUPPLEMENTARY INFORMATION** section of this final rule, including the basis for that finding.

L. Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 15, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 2, 2016.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2016–14180 Filed 6–14–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 27

[ET Docket No. 14–165; FCC 15–99]

Unlicensed Use of TV Band and 600 MHz Band Spectrum

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the rule changes for white space devices and wireless microphones in the Commission's August 11, 2015 Part 15 Report and Order, FCC 15–99. This document is consistent with the Report and Order which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the requirements.

DATES: The amendments to 47 CFR 15.713(b)(2)(iv) through (v), (j)(4), (j)(10) and (j)(11), 15.715(n) through (q) and 27.1320 published at 80 FR 73043, November 23, 2015, are effective on June 15, 2016.

FOR FURTHER INFORMATION CONTACT: Cathy Williams on (202) 418–2918 or via email to: *cathy.williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on May 11, 2016, OMB approved, for a period of three years, the information collection requirements contained in 47 CFR 15.713(b)(2)(iv) through (v), (j)(4), (j)(10) and (j)(11), 15.715(n) through (q) and 27.1320. The Commission publishes this document to announce the effective date of these rule sections. See In the Matter of Amendment of Part 15 of the Commission's Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37, and Amendment of Part 74 of the Commission's Rules for Low Power Auxiliary Stations in the Repurposed 600 MHz Band and 600 MHz Duplex Gap and Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, ET Docket No. 14–165 and GN Docket No. 12–268, FCC 15–99, 80 FR 73043, November 23, 2015.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on May 11, 2016, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR 15.713(b)(2)(iv) through (v), (j)(4), (j)(10) and (j)(11), 15.715(n) through (q) and 27.1320. Under 5 CFR 1320.5(b), an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number.

The OMB Control Number is 3060–1155. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Approval Date: May 11, 2016.

OMB Expiration Date: May 31, 2019.

Title: Sections 15.713, 15.714, 15.715, 15.717 and 27.1320, TV White Space Broadcast Bands.

Form Number: Not applicable.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,010 respondents; 4,000 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On-occasion reporting requirements; recordkeeping requirements; and third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. Sections 154(i), 302, 303(c), 303(f), and 307.

Total Annual Burden: 8,000 hours.

Total Annual Cost: $200,000.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. Respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On August 11, 2015, the Federal Communications Commission adopted a Report and Order (R&O), ET Docket No. 14–165 and GN Docket No. 12–268, FCC 15–99. This R&O made certain changes to the rules for unlicensed device operations in the frequency bands that are now and will continue to be allocated and assigned to broadcast television services (TV bands), including fixed and personal/portable white space devices and unlicensed wireless microphones. It also adopted rules for fixed and personal/portable white space devices and wireless microphones in the 600 MHz guard bands, including the duplex gap, and the 600 MHz band that will be repurposed for new wireless services, and for fixed and personal/portable white space devices on channel 37.

Federal Communications Commission.

Marlene H. Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2016–14178 Filed 6–14–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120627194–3657–02]

RIN 0648–XE567

Atlantic Highly Migratory Species; North Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; Swordfish General Commercial permit retention limit inseason adjustment for the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions.

SUMMARY: NMFS is adjusting the Swordfish (SWO) General Commercial permit retention limits for the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions for July through December of the 2016 fishing year, unless otherwise later noticed. The SWO General Commercial permit retention limit in each of these regions is increased from the regulatory default limits to six swordfish per vessel per trip. The SWO General Commercial permit retention limit in the Florida SWO Management Area will remain unchanged at the default limit of zero swordfish per vessel per trip. This adjustment applies to SWO General Commercial permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels when on a non-for-hire trip. This action is based upon consideration of the applicable inseason regional retention limit adjustment criteria.

DATES: The adjusted SWO General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions are effective July 1, 2016, through December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Rick Pearson or Randy Blankinship, 727–824–5399.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of North Atlantic swordfish by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. North Atlantic swordfish quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) into two equal semi-annual directed fishery quotas, an annual incidental catch quota for fishermen targeting other species or taking swordfish recreationally, and a reserve category, according to the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended, and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The 2016 adjusted North Atlantic swordfish quota is expected to be 3,359.4 mt dw (equivalent to the 2015 adjusted quota). From the adjusted quota, 50 mt dw would be allocated to the reserve category for inseason adjustments and research, and 300 mt dw would be allocated to the incidental category, which includes recreational landings and landings by incidental swordfish permit holders, per § 635.27(c)(1)(i). This would result in an allocation of 3,009.4 mt dw for the directed fishery, which would be split equally (1,504.7 mt dw) between two seasons in 2016 (January through June, and July through December).

Adjustment of SWO General Commercial Permit Vessel Retention Limits

The 2016 North Atlantic swordfish fishing year, which is managed on a calendar-year basis and divided into two equal semi-annual quotas, began on January 1, 2016. Landings attributable to the SWO General Commercial permit are counted against the applicable semi-annual directed fishery quota. Regional default retention limits for this permit have been established and are automatically effective from January 1 through December 31 each year, unless changed based on the inseason regional retention limit adjustment criteria at § 635.24(b)(4)(iv). The default retention limits established for the SWO General Commercial permit are: (1) Northwest Atlantic region—three swordfish per vessel per trip; (2) Gulf of Mexico region—three swordfish per vessel per trip; (3) U.S. Caribbean region—two swordfish per vessel per trip; and, (4) Florida SWO Management Area—zero swordfish per vessel per trip. The default retention limits apply to SWO General Commercial permitted vessels and to HMS Charter/Headboat permitted vessels when fishing on non for-hire trips. As a condition of these permits, vessels may not possess, retain, or land any more swordfish than is specified for the region in which the vessel is located.

Under § 635.24(b)(4)(iii), NMFS may increase or decrease the SWO General Commercial permit vessel retention limit in any region within a range from zero to a maximum of six swordfish per vessel per trip. Any adjustments to the retention limits must be based upon a consideration of the relevant criteria provided in § 635.24(b)(4)(iv), which include: The usefulness of information obtained from biological sampling and monitoring of the North Atlantic swordfish stock; the estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year; the estimated amounts by which quotas for other categories of the fishery might be exceeded; effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments; variations in seasonal distribution, abundance, or migration patterns of swordfish; effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota; and, review of dealer reports, landing trends, and the availability of swordfish on the fishing grounds.

NMFS has considered these criteria as discussed below and their applicability to the SWO General Commercial permit retention limit in all regions for July through December of the 2016 North Atlantic swordfish fishing year. Last year, through June 30, 2015, with application of the default retention limits, directed swordfish landings were 493 mt dw (32.8 percent of the 1,505 mt dw January to June semi-annual adjusted directed sub-quota). On July 28, 2015, NMFS adjusted SWO General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions from default levels to six swordfish per vessel per trip (80 FR 44884). Through December 31, 2015, directed swordfish landings for the July through December semi-annual period were approximately 659.9 mt dw (43.9 percent of the adjusted directed sub-quota). Preliminary total annual directed swordfish landings, through December 31, 2015, were approximately 1,152.9 mt dw, or 38.3 percent of the 3,010 mt dw annual adjusted directed swordfish quota. A six swordfish per vessel trip limit for SWO General Commercial permit holders was maintained for the period January 1, 2016, through June 30, 2016, in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions (80 FR 81770). As of April 30, 2016, directed swordfish landings were 268.2 mt dw (or 17.8% of the anticipated 1,504.7 mt dw adjusted directed sub-quota).

Given that directed swordfish landings in 2015 fell well below the adjusted 2015 annual quota, and that 2016 directed landings continue to be below the anticipated 2016 annual swordfish quota, and considering the regulatory criteria, NMFS has determined that the SWO General Commercial permit vessel retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions applicable to persons issued a SWO General Commercial permit or HMS Charter/Headboat permit (when on a non for-hire trip) should be increased from the default levels that would otherwise automatically become effective on July 1, 2016.

A principal consideration is the objective of providing opportunities to harvest the full North Atlantic directed swordfish quota without exceeding it based upon the 2006 Consolidated HMS FMP goal to, consistent with other objectives of this FMP, "manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems." At the same time, it is also important for NMFS to continue to provide protection to important swordfish juvenile areas and migratory corridors.

After considering all of the relevant criteria, NMFS has determined that increases from the default limits are warranted. With respect to the regulatory criteria, NMFS has examined dealer reports and landing trends and determined that the information obtained from biological sampling and monitoring of the North Atlantic swordfish stock is useful. Recently implemented electronic dealer reporting provides accurate and timely monitoring of landings. This information indicates that sufficient directed swordfish quota will be available from July 1 through December 31, 2016, at the higher retention levels, if recent swordfish landing trends continue. Regarding the regulatory criterion that NMFS consider "the estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year," the directed swordfish quota has not been harvested for several years and, based upon current landing trends, is not likely to be harvested or exceeded during the remainder of 2016. Based upon recent landings rates from dealer reports, an increase in the vessel retention limit for SWO General Commercial permit holders is not likely to cause quotas for other categories of the fishery to be exceeded. Similarly, regarding the criteria that NMFS consider the estimated amounts by which quotas for other categories of the fishery might be exceeded and the effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota, NMFS expects there to be sufficient swordfish quota for 2016, and thus increased catch rates in these three regions are not expected to preclude vessels in any of the other regions from having a reasonable opportunity to harvest a portion of the overall swordfish quota. Landings by vessels issued this permit (and Charter/Headboat permitted vessels on a non for-hire trip) are counted against the adjusted directed swordfish quota. As indicated above, this quota has not been exceeded for several years and, based upon current landing trends, is not likely to be exceeded during the remainder of 2016.

With regard to swordfish abundance, the 2015 report by ICCAT's Standing Committee on Research and Statistics indicated that the North Atlantic swordfish stock is not overfished ($B_{2011}/B_{msy} = 1.14$), and overfishing is not occurring ($F_{2011}/F_{msy} = 0.82$). Increasing the retention limits for this U.S. handgear fishery is not expected to affect the swordfish stock status determination because any additional landings would be in compliance with the ICCAT recommended U.S. North Atlantic swordfish quota allocation.

Based upon landings over the last several years, including 2016, it is highly unlikely that either of the two semi-annual directed swordfish subquotas would be harvested with the default retention limits of three swordfish per vessel per trip (Northwest Atlantic and Gulf of Mexico), and two swordfish per vessel per trip (U.S. Caribbean). For the entire 2015 fishing year, 38.3 percent of the total adjusted directed swordfish quota was harvested. Thus far, swordfish landings in 2016 have been less than landings during the same period in 2015.

Increasing the swordfish General Commercial permit retention limits to six fish per vessel per trip will increase the likelihood that directed swordfish landings will approach, but not exceed, the total annual directed swordfish quota. Increasing opportunity beginning on July 1, 2016, is also important because of the migratory nature and seasonal distribution of swordfish, one of the regulatory criteria to be considered when changing the retention limit inseason (variations in seasonal distribution, abundance, or migration patterns of swordfish). In a particular geographic region, or waters accessible from a particular port, the amount of fishing opportunity for swordfish may be constrained by the short amount of time the swordfish are present as they migrate. Dealer reports for Swordfish General Commercial permitted vessels indicate that swordfish are available from July through December in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions.

Based upon these considerations, NMFS has determined that a six-fish per vessel per trip swordfish General Commercial permit retention limit is warranted in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions from July 1, 2016 through December 31, 2016, for swordfish General Commercial permitted vessels and HMS Charter/Headboat permitted vessels when on a non for-hire trip. This will provide a reasonable opportunity to harvest the U.S. quota of swordfish without exceeding it, while maintaining an equitable distribution of fishing opportunities; help achieve optimum yield in the swordfish fishery; allow for the collection of data for stock monitoring purposes; and be consistent with the objectives of the 2006 Consolidated HMS FMP, as amended. With regard to the objectives of the FMP, this adjustment provides the greatest overall benefit to the Nation, particularly with respect to food production, by increasing commercial swordfish fishing opportunities without exceeding the available quota. It helps to preserve a traditional swordfish handgear fishery (rod and reel, handline, harpoon, bandit gear, and greenstick) which, in New England, dates back to the 1880s. Although this action does not specifically provide recreational fishing opportunities, it will have a minimal impact on this sector because recreational landings are counted against a separate incidental swordfish quota. Finally, as discussed in the next paragraph, this action takes into account the protection of marine ecosystems by maintaining a zero-fish retention limit in the Florida Swordfish Management Area. Therefore, NMFS increases the swordfish General Commercial permit retention limits from the default levels to six swordfish per vessel per trip in these three regions, effective from July 1, 2016 through December 31, 2016, unless otherwise noticed.

NMFS has determined that the retention limit will remain at zero swordfish per vessel per trip in the Florida SWO Management Area at this time. As described in Amendment 8 to the 2006 Consolidated HMS FMP, the area off the southeastern coast of Florida, particularly the Florida Straits, contains oceanographic features that make the area biologically unique. It provides important juvenile swordfish habitat, and is essentially a narrow migratory corridor containing high concentrations of swordfish located in close proximity to high concentrations of people who may fish for them. Public comment on Amendment 8, including from the Florida Fish and Wildlife Conservation Commission, indicated concern about the resultant high potential for the improper rapid growth of a commercial fishery, increased catches of undersized swordfish, the potential for larger numbers of fishermen in the area, and the potential for crowding of fishermen, which could lead to gear and user conflicts. These concerns remain valid. NMFS will continue to collect information to evaluate the appropriateness of the retention limit in the Florida SWO Management Area and other regional retention limits.

These adjustments are consistent with the 2006 Consolidated HMS FMP as amended, ATCA, and the Magnuson-Stevens Act, and are not expected to negatively impact stock health.

Monitoring and Reporting

NMFS will continue to monitor the swordfish fishery closely during 2016 through mandatory landings and catch reports. Dealers are required to submit landing reports and negative reports (if no swordfish were purchased) on a weekly basis.

Depending upon the level of fishing effort and catch rates of swordfish, NMFS may determine that additional retention limit adjustments or closures are necessary to ensure that available quota is not exceeded or to enhance fishing opportunities. Subsequent actions, if any, will be published in the **Federal Register**. In addition, fishermen may access *http://www.nmfs.noaa.gov/sfa/hms/species/swordfish/landings/index.html* for updates on quota monitoring.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP, as amended, provide for inseason retention limit adjustments to respond to changes in swordfish landings, the availability of swordfish on the fishing grounds, the migratory nature of this species, and regional variations in the fishery. Based on available swordfish quota, stock abundance, fishery performance in recent years, and the availability of swordfish on the fishing grounds, among other considerations, adjustment to the swordfish General Commercial permit retention limits from the default levels is warranted. Analysis of available data shows that adjustment to the swordfish daily retention limit from the default levels would result in minimal risks of exceeding the ICCAT-allocated quota. NMFS provides notification of retention limit adjustments by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the "Atlantic HMS Breaking News" Web site at *http://www.nmfs.noaa.gov/sfa/hms/news/breaking_news.html.*

Delays in temporarily increasing these retention limits caused by the time required to publish a proposed rule and accept public comment would adversely affect those SWO General Commercial permit holders and HMS Charter/Headboat permit holders that would otherwise have an opportunity to harvest more than the default retention limits of three swordfish per vessel per trip in the Northwest Atlantic and Gulf of Mexico regions, and two swordfish per vessel per trip in the U.S. Caribbean region. Further, any delay beyond July 1, 2016, the start of the second semi-annual directed fishing period, could exacerbate the problem of low swordfish landings and subsequent quota rollovers. Limited opportunities to harvest the directed swordfish quota may have negative social and economic impacts for U.S. fishermen. Adjustment of the retention limits needs to be effective on July 1, 2016, to allow all of the affected sectors to benefit from the adjustment during the relevant time period, which could pass by for some fishermen if the action is delayed for notice and public comment, and to not preclude fishing opportunities for fishermen who have access to the fishery during a short time period because of seasonal fish migration. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.24(b)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: June 9, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–14068 Filed 6–14–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150902808–6451–02]

RIN 0648–BF04

Fisheries of the Northeastern United States; Amendment 17 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule approves and implements management measures contained in Amendment 17 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan. Amendment 17 management measures were developed by the Mid-Atlantic Fishery Management Council to: Add cost recovery provisions for the Individual Transferable Quota component of the fishery; modify how biological reference points are incorporated into the fishery management plan; and remove the plan's optimum yield range. These changes are intended to make the management plan consistent with requirements of the Magnuson-Stevens Act, and to improve the management of these fisheries.

DATES: This rule is effective July 15, 2016.

ADDRESSES: Copies of Amendment 17 and the Environmental Assessment (EA), with its associated Finding of No Significant Impact (FONSI) and the Regulatory Impact Review (RIR), are available from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. The Amendment 17 EA/FONSI/RIR is also accessible online at: *www.greateratlantic.fisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978–281–9341.

SUPPLEMENTARY INFORMATION:

Background

This final rule concurrently approves Amendment 17 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP) on behalf of the Secretary of Commerce and finalizes implementing regulations. The Mid-Atlantic Fishery Management Council developed this amendment to establish a program to recover the costs of managing the surfclam and ocean quahog individual transferable quota (ITQ) fisheries, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to make administrative changes to improve the efficiency of the FMP. We published a notice of availability on February 24, 2016 (81 FR 9159), announcing a 60-day period for the public to review and provide written comments on whether we, acting on behalf of the Secretary of Commerce, should approve Amendment 17. This comment period ended on April 25, 2016. On March 16, 2016, we published a proposed rule (81 FR 14072) to implement the amendment, and solicited written comments on the proposed rule for a 30-day period, which ended on April 15, 2016.

We reviewed all comments received during these comment periods, whether directed at our approval decision or the proposed regulations. See Comments and Responses section for more information. Now, on behalf of the Secretary of Commerce, we are approving and implementing Amendment 17, consistent with the review and approval process outlined in section 304 of the Magnuson-Stevens Act (16 U.S.C. 1854).

Cost Recovery Program

The Magnuson-Stevens Act requires each limited access privilege program (LAPP), such as the surfclam/ocean quahog ITQ program, to include measures to recover the costs of management, data collection and analysis, and enforcement activities involved with the program. This action implements a cost recovery program for the surfclam and ocean quahog ITQ fisheries modeled on the Council's existing cost recovery program for the Tilefish Individual Fishing Quota (IFQ) Program.

Under the program, any surfclam or ocean quahog ITQ permit holder who has quota share (*i.e.,* receives an initial allocation of cage tags each year) will be responsible for paying a fee at the end of the year. The fee will be based on the number of the ITQ permit holder's cage tags that were used to land clams that year. In the first quarter of each year, the Greater Atlantic Regional Fisheries Office (GARFO) will announce the fee percentage and the associated per-tag fee for that year, and distribute this announcement widely, and distribution will include posting the announcement online and sending it to each ITQ permit holder. Annual fee information will not be published in the **Federal Register**. The fee percentage will be based on the total recoverable costs from the prior fiscal year, adjusted for any prior over- or under-collection, divided by the total ex-vessel value of the fishery. The resulting percentage cannot exceed the 3-percent statutory maximum. Then NMFS will calculate a per-tag fee based on the total number of cage tags used to land surfclams or ocean quahogs in the previous year. This tag fee will be separate from, and in addition to, the price ITQ permit holders currently pay to the tag vendor to obtain the physical cage tags each year. If an ITQ permit holder transfers some or all of his or her cage tags or quota share after the start of the fishing year, they will still be liable for any cost recovery fee based on landings of the initial allocation of cage tags.

This process includes an inherent assumption that a similar number of cage tags will be used each year. While the fishery has been largely stable over time, many factors (*e.g.,* weather events, market demand, etc.) may result in the use of more or fewer tags in any given year. As a result, we fully anticipate that, in some years, we will collect more or less money than is necessary to recover our costs. Refunding over-collections and issuing supplemental bills to make up for shortfalls would increase the cost of administering the fishery, which would increase the amount charged in bills the following year. To avoid these additional costs, we will apply any over- or under-collection to our calculation of recoverable costs and per-tag fees for the following year. Our communications with ITQ permit holders each year will make clear that any prior over- or under-collection adjustments will be incorporated into the following year's cost-recovery billing.

Under the cost recovery program established by this final rule, at the start of the 2017 calendar year, we will use the total recoverable costs from the 2016 fiscal year (October 1, 2015, through September 30, 2016) and the total value of the fisheries in the 2016 calendar year to calculate fee percentages for both surfclam and ocean quahogs. We will then use the total number of tags used during the 2016 calendar year to determine a per-tag fee for the 2017 calendar year.

In early 2018 (most likely February or March) we will issue the first cost recovery bills based on the previously announced per-tag fee and the number of cage tags that were used to land surfclams or ocean quahogs in 2017. At the same time, we will announce the fee percentage and per-tag fees for the 2018 fishing year. This anticipated timeline is detailed in Table 1.

TABLE 1—SURFCLAM AND OCEAN QUAHOG COST RECOVERY IMPLEMENTATION TIMELINE

Date	Anticipated action
October 2015	We began tracking recoverable costs for surfclam and ocean quahog ITQ fisheries during fiscal year 2016.
March 2017	We will announce the 2017 cost recovery per-tag fee, based on recoverable costs in fiscal year 2016 and the total number of cage tags used in calendar year 2016.
March 2018	We will issue a 2017 bill to each ITQ permit holder based on the previously announced per-tag fee and how many of the ITQ permit holder's 2017 cage tags were used to land clams.
March 2018	Concurrent with issuing bills for 2017, we will announce the 2018 cost recovery per-tag fee, based on costs in fiscal year 2017 (adjusted for any anticipated over- or under-collection) and the total number of cage tags used in calendar year 2017.
Subsequent years	Each year, we will issue bills for the previous fishing year and announce the cost recovery per-tag fee for the current fishing year.

Cost recovery bills will be due within 30 days of the date of the bill, and must be paid using the GARFO fishing industry Web site: Fish Online (*www.greateratlantic.fisheries.noaa.gov/apps/login/login*). Fish Online is a secure Web site and we provide a username and password for individuals to access their accounts. Members of the fishing industry may use the site to check details about their fishing permit and landings. The Web page has been used since 2010 to collect cost recovery payments for the Tilefish IFQ and Limited Access General Category Scallop IFQ fisheries. Cost recovery bills may be paid with a credit card or with an account number and routing number from a bank account, often referred to as an Automated Clearing House or ACH payment. Once bills are issued, ITQ permit holders will be able to log onto Fish Online and access the Cost Recovery section. Payments made through Fish Online are processed using the U.S. Treasury Department's Pay.gov tool, and no bank account or credit card information is retained by NMFS. We will not be able to accept partial payments or advance payments before bills are issued. We do not anticipate that other payment methods will be accepted, as the current payment system has been effective for other cost recovery programs. However, other payment methods may be authorized if the Regional Administrator determines that electronic payment is not practicable.

The cost recovery program implemented by this final rule includes procedures in case an ITQ permit holder should fail to pay their cost recovery bill. If a bill is not paid by the due date, NMFS would issue a demand letter, formally referred to as an initial administrative determination. This letter would describe the past-due fee, describe any applicable interest or penalties that may apply, stipulate a 30-day deadline to either pay the amount due or submit a formal appeal to the Regional Administrator, and provide instructions for submitting such an appeal. If no appeal is submitted by the deadline, the Regional Administrator would issue a final determination based on the information already on file. An appeal must be submitted in writing, allege credible facts or circumstances, and include any relevant information or documentation to support the appeal. If an appeal is submitted, the Regional Administrator would appoint an appeals officer to determine if there is sufficient information to support the appeal and that all procedural requirements have been met. The appeals officer would then review the record and issue a recommendation to the Regional Administrator. The Regional Administrator, acting on behalf of the Secretary of Commerce, would then review the appeal and issue a written decision. If the Regional Administrator's final determination (whether or not there was an appeal) finds that ITQ permit holder is out of compliance, full payment would be required within 30 days. Following a final determination, we may also prohibit any transfer of cage tags or quota share, or renewal of the ITQ permit until full payment, including any interest or penalties, is received. If full payment is not received within this final 30-day period as required, we may then refer the matter to the Department of Treasury for collection.

Each year NMFS will issue a report on the status of the ITQ cost recovery program. This report will provide details of the recoverable costs to be collected, the success of previous collection efforts, and other relevant information.

Biological Reference Points

Under National Standard 1, the Magnuson-Stevens Act requires that each Council FMP define overfishing as a rate or level of fishing mortality (F) that jeopardizes a fishery's capacity to produce maximum sustainable yield (MSY) on a continuing basis, and defines an overfished stock as a stock size that is less than a minimum biomass threshold (see 50 CFR 600.310(e)(2)). The Magnuson-Stevens Act also requires that each FMP specify objective and measurable status determination criteria (*i.e.*, biological reference points (BRPs)) for identifying when stocks covered by the FMP are overfished or subject to overfishing (see section 303(a)(10), 16 U.S.C. 1853). To fulfill these requirements, status determination criteria are comprised of two components: (1) A maximum fishing mortality threshold; and (2) a minimum stock size threshold.

This action modifies how these BRPs are incorporated in the FMP. Rather than using specific definitions, the FMP will now include broad criteria to allow for greater flexibility in incorporating changes to the definitions of the maximum fishing mortality threshold and/or minimum stock size threshold as the best scientific information becomes available, consistent with National Standards 1 and 2. The Council has already adopted this approach in several of its other FMPs, and this change will make the Surfclam and Ocean Quahog FMP consistent with these other FMPs. Further details of this change were provided in the preamble to the proposed rule and are not repeated here.

Optimum Yield

This action removes the optimum yield ranges (1.85–3.40 million bushels (98.5 to 181.0 million L) for surfclam, and 4.00–6.00 million bushels (213.0 to 319.4 million L) for ocean quahog) from the FMP, as explained in detail in the preamble to the proposed rule. As part of the normal specifications process, the Council's Scientific and Statistical Committee will recommend Acceptable Biological Catch limits, and the Surfclam and Ocean Quahog Advisory Panel will develop recommendations for commercial quotas, including optimum yield recommendations. This information will be provided to the Council to inform its decisions regarding annual catch limits, catch targets, and commercial harvest quotas.

Corrections and Clarifications

Apart from the management measures in Amendment 17, this action modifies the Atlantic surfclam and ocean quahog regulations pursuant to the Secretary's authority under section 305(d) of the Magnuson-Stevens Act (16 U.S.C. 1855(d)) to ensure that FMPs are implemented as intended and consistent with the requirements of the Magnuson-Stevens Act. This action modifies the regulations at 50 CFR 648.11(a) so that vessels holding a Federal permit for Atlantic surfclam or ocean quahog are included on the list of vessels required to carry a NMFS-certified fisheries observer if requested by the Regional Administrator. A detailed explanation for this change was provided in the preamble of the proposed rule and is not repeated here.

In addition, this final rule includes corrections for two minor errors in the existing regulations that were not addressed in the proposed rule. These corrections (for an error in a cross-reference and a conversion error) are described below in more detail.

Changes From the Proposed Rule

As mentioned above, this final rule corrects two minor errors in the regulations that were not mentioned in the proposed rule. After publication of the proposed rule, two minor errors were discovered in the current surfclam and ocean quahog regulations. A cross reference in § 648.75(a)(2)(iii) refers to the wrong sub-paragraph, and § 648.76(a) contains an erroneous conversion from nautical miles to kilometers. Both errors, which were inadvertently introduced by a September 29, 2011, final rule (76 FR 60606), are corrected in this final rule.

We also have modified a portion of the proposed rule language that would add a new paragraph (c) to the existing regulations at § 648.74, pertaining to the consequences for failing to pay a cost recovery fee. The proposed rule language at § 648.74(c)(6)(iii)(C)(*1*) would have authorized NMFS to suspend an ITQ permit for non-payment until the outstanding fee is paid in full. As a result of suspension of an ITQ permit for non-payment, the ITQ permit holder would have been prohibited from transferring quota share or cage tags and from using any previously issued cage tags. In addition, renewal of the permit could be prohibited in subsequent years until payment is received. The resulting prohibition on using previously issued cage tags for the current fishing year was potentially more punitive than necessary, and was inconsistent with other catch share programs that we administer around the country. Therefore, the language of this final rule at § 648.74(c)(6)(iii)(C)(*1*) does not authorize suspension of the current ITQ permit, but instead authorizes the Regional Administrator to disapprove any application to transfer quota share or cage tags to or from the ITQ permit holder and to deny issuance of an ITQ permit in subsequent years, until full payment is received. Thus, the current ITQ permit would remain valid and any previously issued cage tags could continue to be used to land clams for the remainder of that fishing year.

Comments and Responses

A total of five comments were received on the proposed rule and notice of availability. One commenter did not address the proposed action, but was generally opposed to commercial fishing and our management of the resource. The four other comments were submitted by members and representatives of the commercial surfclam and ocean quahog industry. All four letters made similar points, which are discussed by topic.

Comment 1: Commenters from the clam industry assert that the Magnuson-Stevens Act only requires collection of the incremental costs of a LAPP, and that if those costs are negative then no cost recovery program is necessary. To support this position, they cite the 2010 NOAA Catch Share Policy document. The commenters state that the costs of managing the clam fishery are significantly lower now, under the ITQ, than they were in the 1980s. As a result, they assert that cost recovery is not necessary and should not be imposed on the surfclam and ocean quahog ITQ program.

Response: The 2010 NOAA Catch Share Policy document represents a series of guiding principles for consideration when developing a catch share program. It does not, however, have the force of law or represent binding requirements for all catch share programs. In discussions of cost recovery, the document does state that the relevant costs for cost recovery would be the incremental costs of the catch share program, and describes how those costs may be determined using a before and after comparison, effectively describing the net costs of the program. This language was taken from the 2007 report "The Design and Use of Limited Access Privilege Programs," by editors Lee Anderson and Mark Holliday (NOAA Technical Memorandum NMFS–F/SPO–86). Since the publication of the 2007 report, it has become common to use the terms "recoverable costs" and "incremental costs" interchangeably. However, there are several problems with using this approach to determining recoverable costs in a LAPP.

The Magnuson-Stevens Act does not use the term "incremental costs" when addressing cost recovery in LAPPs. Section 304(d)(2)(A) of the Act requires the Secretary to "collect a fee to recover the *actual costs* directly related to the management, data collection, and enforcement" (emphasis added) of any LAPP. The GARFO has consistently advised the Council that this requirement is best interpreted to refer to costs that are specific to the LAPP, and that would not have been incurred if the fishery was not managed as a LAPP. This approach is consistently applied across other LAPPs in the Greater Atlantic Region. For the surfclam and ocean quahog ITQ program, these costs would include the costs of issuing and renewing ITQ permits, processing cage tag transfers, and tracking cage tag usage. There are always some new tasks associated with a new LAPP, so while these costs could be low they could not be negative.

Comment 2: One commenter claims that the cost recovery program will require the industry to pay for at-sea observers.

Response: As described in the previous response, we have determined that the recoverable costs are for tasks that would not be conducted if not for the ITQ program. Current observer coverage in the surfclam and ocean quahog fisheries is based on the standardized bycatch reporting methodology (SBRM). Coverage specified under the SBRM is paid for by the Federal Government through NMFS. The SBRM is a requirement for all fisheries managed by the Council and is not specific to the ITQ. Therefore, the cost of SBRM observer coverage would not be considered recoverable under this program.

Comment 3: The four members of the clam industry that provided comments express opposition to the proposed change to how BRPs are incorporated into the FMP. The commenters maintain that this change is discretionary on the part of the Council, that the proposed criteria for acceptable peer review is not rigorous enough, and that any change could lead to instability in the management of these fisheries.

Response: As mentioned above, National Standard 1 guidelines direct all FMPs to specify BRPs, and National Standard 2 requires all conservation and management measures to be based on the best scientific information available. Under the current specifications process, when new BRPs are identified through an approved scientific review, they are used in setting management measures consistent with National Standard 2, even though they may differ from the BRPs in the FMP. This can lead to inconsistencies between the information in the FMP and what is used for management, and such inconsistencies can linger and cause confusion for years before an appropriate FMP amendment is developed and implemented. The Council has elected to use a broad and standardized list of potential peer review processes for establishing new BRPs. This allows the Council to maintain some consistency between FMPs, while ensuring that the best available scientific information is readily available for use in decision making, but does not mean that all potential peer review processes are equally applicable to every stock the Council manages. Consistent with the process now used by the Council and its SSC, each stock assessment is evaluated based on the information available and how well it performs relative to previous assessments. This change to the FMP does not reduce the scientific rigor needed to establish BRPs for the surfclam and ocean quahog stocks. We acknowledge that this change to the Council's FMP is discretionary, as it is not specifically mandated by any statute. However, the Council is free to determine how best to manage its fisheries and to make such modifications to its FMPs, if those changes are consistent with applicable law. Because updated BRPs are already used in setting management measures for surfclam and ocean quahog, regardless of the BRPs that are formally stated in the FMP, the modification will have no practical impact on the specification-setting process. The change implemented by this final rule will make the plan consistent with other Council FMPs and established practice.

Comment 4: The four members of the clam industry that provided comment express opposition to the proposed removal of the optimum yield ranges for surfclams and ocean quahogs and support for the no-action alternative. The commenters state that the change is unnecessary and that they are concerned that removing the optimum yield ranges from the FMP could result in significant and rapid changes in harvest quotas.

Response: As stated in the previous response, the Council has the flexibility to determine how best to manage its fisheries and to make such modifications to its FMPs, if those changes are consistent with applicable law. As discussed in the preamble of this rule, the current optimum yield ranges specified in the FMP have been in place for many years and no longer reflect our understanding of the biology of the stocks. Because the optimum yield ranges in the FMP are not connected to the maximum sustainable yield, the use of the term is inconsistent with how the term "optimum yield" is used in the current National Standard 1 guidance. For these reasons, the Council has opted to remove the ranges from the FMP. The industry's preference for a constant harvest strategy is well known, and the Council is free to factor that preference into its specifications-setting process and support consistent harvest quotas for surfclams and ocean quahogs. The surfclam and ocean quahog industry has consistently been an invaluable partner in the successful management of these species. We are confident that this partnership will continue in the future, and that the Council will give full consideration to the preferences of the industry when considering harvest quotas.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Administrator, Greater Atlantic Region, NMFS, has determined that this final rule is consistent with Amendment 17, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 9, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.11, revise paragraph (a) to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, Atlantic surfclam, ocean quahog, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specific in paragraph (g) of this section. Also, any vessel or vessel owner/operator that fishes for, catches or lands hagfish, or intends to fish for, catch, or land hagfish in or from the exclusive economic zone must carry a NMFS-certified fisheries observer when requested by the Regional Administrator in accordance with the requirements of this section.

* * * * *

■ 3. In § 648.72, revise paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 648.72 Surfclam and ocean quahog specifications.

(a) *Establishing catch quotas.* The amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for up to a 3-year period by the Regional Administrator. Specifications of the annual quotas will be accomplished in the final year of the quota period, unless the quotas are modified in the interim pursuant to paragraph (b) of this section.

(1) *Quota reports.* On an annual basis, MAFMC staff will produce and provide to the MAFMC an Atlantic surfclam and ocean quahog annual quota recommendation paper based on the ABC recommendation of the SSC, the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a multi-year annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP for up to a 3-year period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

(i) Exploitable and spawning biomass relative to the quotas.

(ii) Fishing mortality rates relative to the quotas.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Geographical distribution of the catch relative to the geographical distribution of the resource.

(vi) Status of areas previously closed to surfclam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

* * * * *

■ 4. In § 648.74, add paragraph (c) to read as follows:

§ 648.74 Individual Transferable Quota (ITQ) Program.

* * * * *

(c) *ITQ cost recovery*—(1) *General.* The cost recovery program collects fees of up to three percent of the ex-vessel value of surfclams or ocean quahogs harvested under the ITQ program in accordance with the Magnuson-Stevens Act. NMFS collects these fees to recover the actual costs directly related to the management, data collection, and enforcement of the surfclam and ocean quahog ITQ program.

(2) *Fee responsibility.* If you are an ITQ permit holder who holds ITQ quota share and receives an annual allocation pursuant to paragraph (a) of this section, you shall incur a cost recovery fee, based on all landings of surfclams or ocean quahogs authorized under your initial annual allocation of cage tags. You are responsible for paying the fee assessed by NMFS, even if the landings are made by another ITQ permit holder (*i.e.,* if you transfer cage tags to another individual who subsequently uses those tags to land clams). If you permanently transfer your quota share, you are still responsible for any fee that results from your initial annual allocation of cage tags even if the landings are made after the quota share is permanently transferred.

(3) *Fee basis.* NMFS will establish the fee percentages and corresponding per-tag fees for both the surfclam and ocean quahog ITQ fisheries each year. The fee percentages cannot exceed three percent of the ex-vessel value of surfclams and ocean quahogs harvested under the ITQ fisheries pursuant to section 304(d)(2)(B) of the Magnuson-Stevens Act.

(i) *Calculating fee percentage.* In the first quarter of each calendar year, NMFS will calculate the fee percentages for both the surfclam and ocean quahog ITQ fisheries based on information from the previous year. NMFS will use the following equation to annually determine the fee percentages: Fee percentage = the lower of 3 percent or (DPC/V) × 100, where:

(A) "DPC," or direct program costs, are the actual incremental costs for the previous fiscal year directly related to the management, data collection, and enforcement of the ITQ program. "Actual incremental costs" mean those costs that would not have been incurred but for the existence of the ITQ program. If the amount of fees collected by NMFS is greater or lesser than the actual incremental costs incurred, the DPC will be adjusted accordingly for calculation of the fee percentage in the following year.

(B) "V" is the total ex-vessel value from the previous calendar year attributable to the ITQ fishery.

(ii) *Calculating per-tag fee.* To facilitate fee collection, NMFS will convert the annual fee percentages into per-tag fees for both the surfclam and ocean quahog ITQ fisheries. NMFS will use the following equation to determine each per-tag fee: Per-Tag Fee = (Fee Percentage × V)/T, where:

(A) "T" is the number of cage tags used, pursuant to § 648.77, to land shellfish in the ITQ fishery in the previous calendar year.

(B) "Fee percentage" and "V" are defined in paragraph (c)(3)(i) of this section.

(C) The per-tag fee is rounded down so that it is expressed in whole cents.

(iii) *Publication.* During the first quarter of each calendar year, NMFS will announce the fee percentage and per-tag fee for the surfclam and ocean quahog ITQ fisheries, and publish this information on the Regional Office Web site (*www.greateratlantic.fisheries.noaa.gov*).

(4) *Calculating individual fees.* If you are responsible for a cost recovery fee under paragraph (c)(2) of this section, the fee amount is the number of ITQ cage tags you were initially allocated at the start of the fishing year that were subsequently used to land shellfish multiplied by the relevant per-tag fee, as described in paragraph (c)(3)(ii) of this section. If no tags from your initial allocation are used to land clams you will not incur a fee.

(5) *Fee payment and collection.* NMFS will send you a bill each year for any applicable ITQ cost recovery fee.

(i) *Payment due date.* You must submit payment within 30 days of the date of the bill.

(ii) *Payment method.* You may pay your bill electronically using a credit card or direct Automated Clearing House withdrawal from a designated checking account through the Federal web portal, *www.pay.gov,* or another internet site designated by the Regional Administrator. Instructions for electronic payment will be included with your bill and are available on the payment Web site. Alternatively, payment by check may be authorized by the Regional Administrator if he/she determines that electronic payment is not practicable.

(6) *Payment compliance.* If you do not submit full payment by the due date, NMFS will notify you in writing via an initial administrative determination (IAD) letter.

(i) *IAD.* In the IAD, NMFS will:

(A) Describe the past-due fee;

(B) Describe any applicable interest charges that may apply;

(C) Provide you 30 days to either pay the specified amount or submit an appeal; and

(D) Include instructions for submitting an appeal.

(ii) *Appeals.* If you wish to appeal the IAD, your appeal must:

(A) Be in writing;

(B) Allege credible facts or circumstances;

(C) Include any relevant information or documentation to support your appeal; and

(D) Be received by NMFS no later than 30 calendar days after the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of the business on the next business day. Your appeal must be mailed or hand delivered to the address specified in the IAD.

(iii) *Final decision*—(A) *Final decision on your appeal.* If you appeal an IAD, the Regional Administrator shall appoint an appeals officer. After determining there is sufficient information and that all procedural requirements have been met, the appeals officer will review the record and issue a recommendation on your appeal to the Regional Administrator, which shall be advisory only. The recommendation must be based solely on the record. Upon receiving the findings and recommendation, the Regional Administrator, acting on behalf of the Secretary of Commerce, will issue a written decision on your appeal which is the final decision of the Department of Commerce.

(B) *Final decision if you do not appeal.* If you do not appeal the IAD within 30 calendar days, NMFS will notify you via a final decision letter. The final decision will be from the Regional Administrator and is the final decision of the Department of Commerce.

(C) *If the final decision determines that you are out of compliance.* (*1*) The Regional Administrator may, at any time thereafter, disapprove any application to transfer quota share or cage tags under § 648.74(b), and prohibit issuance of the surfclam or ocean quahog ITQ permit for subsequent years, until the outstanding balance is paid in full.

(*2*) The final decision will require full payment within 30 calendar days.

(*3*) If full payment is not received within 30 calendar days of issuance of the final decision, NMFS may refer the matter to the appropriate authorities for the purposes of collection or enforcement.

(7) *Annual report.* NMFS will publish annually a report on the status of the ITQ cost recovery program. The report will provide details of the costs incurred by NMFS for the management, data collection, and enforcement of the surfclam and ocean quahog ITQ program, and other relevant information at the discretion of the Regional Administrator.

■ 5. In § 648.75, revise paragraph (a)(2)(iii) to read as follows:

§ 648.75 Shucking at sea and minimum surfclam size.

(a) * * *

(2) * * *

(iii) If the Regional Administrator makes the determination specified in paragraph (a)(2)(i) of this section, he/she may authorize the vessel owner to shuck surfclams or ocean quahogs at sea. Such authorization shall be in writing and be carried aboard the vessel.

* * * * *

■ 6. In § 648.76, revise paragraph (a)(1) to read as follows:

§ 648.76 Closed areas.

(a) * * *

(1) *Boston Foul Ground.* The waste disposal site known as the "Boston Foul Ground" and located at 42°25′36″ N. lat., 70°35′00″ W. long., with a radius of 1 nm (1.852 km) in every direction from that point.

* * * * *

■ 7. In § 648.79, revise paragraph (a)(1) to read as follows:

§ 648.79 Surfclam and ocean quahog framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; description and identification of EFH (and fishing gear management measures that impact EFH); habitat areas of particular concern; set-aside quota for scientific research; VMS; and suspension or adjustment of the surfclam minimum size limit. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

* * * * *

[FR Doc. 2016–14087 Filed 6–14–16; 8:45 am]

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Proposed Rules

Federal Register
Vol. 81, No. 115
Wednesday, June 15, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–FV–15–0047; FV15–930–2 PR]

Tart Cherries Grown in the States of Michigan, et al.; Revision of Optimum Supply Requirements and Establishment of Inventory Release Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement recommendations from the Cherry Industry Administrative Board (Board) to add inventory release procedures and revise optimum supply provisions under the marketing order for tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin (order). The Board locally administers the order and is comprised of growers and handlers operating within the production area. This rule would establish procedures for releasing inventory from reserves and increase the maximum carry-out volume available when calculating optimum supply from 20 million pounds to 100 million pounds. These changes would provide clear procedures should an inventory release be necessary and would provide more flexibility when calculating optimum supply.

DATES: Comments must be received by July 15, 2016.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Jennie.Varela@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 930, as amended (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on changes that would add inventory release procedures and would revise the optimum supply and exemption provisions under the order. This proposal would establish procedures for releasing inventory from reserves and increase the maximum carry-out volume available when calculating optimum supply from 20 million pounds to 100 million pounds. These changes would provide clear procedures should an inventory release be necessary and would provide more flexibility when calculating optimum supply. The Board voted to recommend these proposed changes to the Secretary at its meeting on June 25, 2015.

Section 930.50 prescribes procedures for calculating an optimum supply based on sales history to determine free and restricted percentages under volume regulation. As part of the process, the Board is required to determine the volume of fruit they anticipate would be necessary to have on hand at the end of the crop year. The order refers to this volume as carry-out inventory. This section currently specifies, in part, that the Board can consider a carry-out inventory of up to 20 million pounds, or another amount with the approval of the Secretary. This proposal would amend Section 930.151 to increase the maximum carry-out volume available when calculating optimum supply from 20 million pounds to 100 million pounds.

Section 930.54 of the order governs the use or disposition of inventory reserve cherries. Under this authority, the Board can recommend to the Secretary that a portion or all of inventory reserve cherries be released if there is not sufficient fruit on the market to meet commercial demand. Sections 930.55 and 930.57 outline the provisions and requirements of the primary and secondary reserves, respectively. Further, no cherries in the secondary reserve may be released until all cherries in the primary reserve have been released. This proposal would create Section 930.154 to establish procedures for releasing inventory from reserves.

When volume regulation is in place, the restricted portion of the crop is either held in reserve by handlers or can be sold for exempt uses as authorized in the rules and regulations of the order. Reserves can be held over multiple crop years and are released when there is a shortfall in supply. While the Board maintains record of the volume in reserve, handlers maintain ownership of the reserve fruit.

All inventory reserves were released to meet demand following a crop disaster in 2012. The following year, the industry was still recovering and the Board did not recommend a volume regulation. When the Board recommended a volume regulation for the 2014–15 season to the Secretary, and cherries were again being added to the reserve, the Board established a committee to review the procedures for releasing restricted inventory from reserves. The committee recommended to the Board that the procedures as previously developed by the Board be maintained, and that any releases should first come from inventory currently in the primary reserve and then from any cherries designated for reserve from the current season if necessary.

Under these procedures, once the additional volume needed for release is established, the release should be apportioned among handlers based on each handler's prior three-year average of volume handled as a percentage of the industry's three-year average. For example, if a handler handled five percent of the previous three years' production, and the Board recommended a release of 20 million pounds, that handler would potentially be authorized to release one million pounds of established reserves (.05 × 20 million). If a handler receives a release larger than what they have in the primary reserve, the excess amount would be reapportioned to those handlers with remaining primary reserve. If the handler in the scenario above had only 750,000 pounds in the primary reserve, the remaining 250,000 pounds would be reallocated to those handlers who still had inventory in the primary reserve.

The committee that reviewed the procedures for releasing restricted inventory from the reserves recognized that inventory reserves can be accumulated over a period of years. Therefore, the committee agreed releases should be based on the average amount handled during the three previous crop years, rather than using a year-to-year basis. The existing release procedures were crafted by the Board through a series of actions in past years and meetings. However, the procedures were not codified in the rules and regulations under the order. This proposal would add the inventory release procedures to the regulations.

This recommendation was also thought to be the most equitable way to conduct releases. One Board member believed the releases should come from the current year's reserves prior to releasing from existing reserves, and did not support the recommendation. However, the Board recognized that during the crop year, complete information on reserves and shipment data would not be available. Thus, the Board recommended codifying inventory release procedures as recommended by the committee. The Board supported the recommendation by a vote of 17–1. This proposal would add a new Section 930.154 to the regulations to establish procedures for releasing inventory from reserves.

In addition to reviewing inventory release procedures, the Board discussed changes to some of its practices regarding calculation of optimum supply. Optimum supply is defined as the average free sales of the prior three years plus desirable carry-out inventory. Desirable carry-out is the amount of fruit needed by the industry to be carried into the succeeding crop year to meet marketing demand until the new crop is available. Desirable carry-out is set each year by the Board after considering market circumstances and needs. Section 930.50(a) currently specifies that desirable carry-out can range from 0 to a maximum of 20 million pounds, but also authorizes the Board to establish an alternative carry-out figure with the approval of the Secretary.

Since the promulgation of the order, the industry has seen new products and new segments emerge, such as dried tart cherries. As a result, at the end of a season there are multiple product lines that need to be supplied with tart cherries before the next harvest, which has impacted desirable carry-out. Desirable carry-out is the amount of fruit needed by the industry to be carried into the succeeding crop year to meet marketing demand until the new crop is available.

In 2014, the Board used its authority to recommend to the Secretary a carry-out volume above the order-prescribed 20 million pound maximum for the 2014–2015 crop year. At that time, the Board estimated it was necessary to have 50 million pounds available at the end of the crop year to fulfill the needs of the industry. In discussing volume regulation for the 2015–2016 crop year, the Board agreed an increased carry-out was again necessary and recommended to the Secretary a 55 million pound carry-out when calculating the optimum supply.

In order to facilitate future carry-out needs without engaging with annual rulemaking, the Board recommended permanently increasing the maximum carry-out to 100 million pounds. Some members considered the 100 million pound upper limit to be too high, and voted against the recommendation. However, this proposed change would only increase the available range for the carry-out value from 0 to 20 million pounds to 0 to 100 million. This proposed amendment would provide the Board with additional flexibility when considering the carry-out, but in itself does not establish a carry-out amount. The Board would still have to discuss and recommend a desirable carry-out value that represents current industry needs each crop year. Consequently, the Board supported the recommendation by a vote of 12–5. This proposal would amend Section 930.151 of the regulations to increase the maximum carry-out volume possible when calculating optimum supply from 20 million pounds to 100 million pounds.

The Board made several other recommendations for changes to the rules and regulations under the order at its June 25, 2015 meeting. These changes are being considered under a separate action.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 600 producers of tart cherries in the regulated area and approximately 40 handlers of tart cherries who are subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000 and small agricultural service firms have been defined as those having annual receipts of less than $7,500,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service and Board data, the average annual grower price for tart cherries during the 2014–15 crop year was $0.35 per pound, and total utilization was around 300 million pounds. Therefore, average receipts for tart cherry producers were around $175,800, well below the SBA threshold for small producers. In 2014, The Food Institute estimated an f.o.b. price of $0.96 per pound for frozen tart cherries, which make up the majority of processed tart cherries. Using this data, average annual handler receipts were about $6.9 million, which is also below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

This proposed action would create § 930.154 of the rules and regulations, establishing procedures for release of inventory reserves. This proposed rule would also revise § 930.151 to allow the Board to consider a carry-out of up to 100 million pounds when calculating optimum supply. These changes are intended to provide clear direction in the event an inventory release becomes necessary and allow the Board to be more responsive to tart cherry market demand. The authority for these actions is provided in §§ 930.50 and 930.54 of the order. The Board voted to recommend these proposed changes to the Secretary at its meeting on June 25, 2015.

It is not anticipated that this action would impose additional costs on handlers or growers, regardless of size. The proposed changes are administrative in nature and intended to align the provisions of the order with current industry practices. The addition of rules and regulations regarding inventory releases is a codification of administrative procedures the Board has had in place for many years. The expanded carry-out upper limit would allow the Board additional flexibility in meeting market needs without additional rulemaking.

The benefits of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Board discussed alternatives to these proposed changes to the order, including releasing reserves from the current crop year or releasing cherries in the order in which the fruit was put into reserve. A committee was established to review the reserve procedures, and it proposed using a three-year average percentage for each handler and releasing the previous crop years' reserves. The Board agreed that the committee's recommendation would be the most equitable solution. Regarding the carry-out limit, the Board considered not recommending a permanent change. However, the Board anticipates needing more than 20 million pounds of carry-out for the foreseeable future. A member suggested changing the motion to 80 million pounds, but that suggestion did not receive support. Thus, the suggested alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0177, (Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

Accordingly, this proposal would not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend and participate in Board deliberations on all issues. Like all Board meetings, the June 25, 2015, meeting was a public meeting and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. A 30-day period is deemed appropriate because this action would need to be in place as soon as possible since handlers are already putting cherries into reserve from the 2015–2016 crop. The action would also need to be in place before the Board meets in June to have preliminary discussions on volume control, including determining an appropriate carry-out figure. All written comments received during the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 930.151:
■ a. Designate the current paragraph as paragraph (a); and
■ b. Add a new paragraph (b) to read as follows:

§ 930.151 Desirable carry-out inventory.

* * * * *

(b) Beginning with the crop year starting July 1, 2016, for the purposes of determining an optimum supply volume, the Board may recommend a desirable carry-out inventory not to exceed 100 million pounds.

■ 3. Section 930.154 is added to read as follows:

§ 930.154 Release of inventory reserve cherries.

As provided in § 930.54, the Board may recommend a release of a portion or all of the primary and/or secondary reserve cherries. The total available reserves will be determined at the beginning of the crop year. The primary reserve as defined in §§ 930.55 and 930.150 must be depleted before the secondary reserve can be released. If a release is recommended, the recommended volume shall be apportioned to handlers on the basis of each handler's proportion of the total volume handled in the preceding three crop years. If a handler has less volume in reserve than is apportioned, the excess volume shall be reapportioned to those who still have volume in reserve until the total release is complete.

Dated: June 10, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–14173 Filed 6–14–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6140; Directorate Identifier 2015–NM–059–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This document announces an extension of the comment period for the above-referenced NPRM, which proposed the adoption of a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. That NPRM invited comments concerning the proposed requirement to modify the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. This extension of the comment period is necessary to provide all interested persons an opportunity to present their views on the proposed requirements of that NPRM.

DATES: We must receive comments on the NPRM by September 19, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6140; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6506; fax: 425–917–6590; email: *Jon.Regimbal@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6140; Directorate Identifier 2015–NM–059–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Model 777 airplanes. The NPRM published in the **Federal Register** on May 4, 2016 (81 FR 26750) ("the NPRM"). The NPRM proposed to require modifying the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions.

The NPRM invited comments on regulatory, economic, environmental, and energy aspects of the proposal.

The NPRM was prompted by fuel system reviews conducted by the manufacturer. The actions specified by the NPRM are intended to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Related Rulemaking

At the time we issued the NPRM, we issued five other NPRMs that also proposed to require modification of the FQIS:

- Docket No. FAA–2016–6139, Directorate Identifier 2015–NM–061–AD, for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes.
- Docket No. FAA–2016–6141, Directorate Identifier 2015–NM–048–AD, for certain The Boeing Company Model 767 airplanes.
- Docket No. FAA–2016–6143, Directorate Identifier 2015–NM–028–AD, for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes), and Model A310 series airplanes.
- Docket No. FAA–2016–6144, Directorate Identifier 2015–NM–088–AD, for certain Airbus Model A318, A319, A320, and A321 airplanes.
- Docket No. FAA–2016–6145, Directorate Identifier 2015–NM–056–AD, for certain The Boeing Company Model 747 airplanes.

Actions Since Previous NPRM Was Issued

Since we issued the NPRM, we have received a request from Airlines for America (A4A) to extend the comment period. A4A stated that the NPRMs are controversial and could drive substantial costs, especially for cargo airlines. To be able to prepare informed and meaningful comments with coordinated consensus among its members, A4A requested a longer comment period to understand a number of factors, including related service information, data and safety analysis of the unsafe condition, and potential costs.

We agree with the request, and have determined that it is appropriate to extend the comment period for the

NPRM to give all interested persons additional time to examine the proposed requirements and submit comments. We have determined that extending the comment period until September 19, 2016, will not compromise the safety of the affected airplanes.

The comment period for Docket No. FAA–2016–6140 closes September 19, 2016.

Because no other portion of the proposal or other regulatory information has been changed, the entire proposal is not being republished.

Issued in Renton, Washington, on June 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14113 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6143; Directorate Identifier 2015–NM–028–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This document announces an extension of the comment period for the above-referenced NPRM, which proposed the adoption of a new airworthiness directive (AD) for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes), and Model A310 series airplanes. That NPRM invited comments concerning the proposed requirement to modify the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. This extension of the comment period is necessary to provide all interested persons an opportunity to present their views on the proposed requirements of that NPRM.

DATES: We must receive comments on the NPRM by September 19, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6143; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6143; Directorate Identifier 2015–NM–028–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes), and Model A310 series airplanes. The NPRM published in the **Federal Register** on May 3, 2016 (81 FR 26493) ("the NPRM"). The NPRM proposed to require modifying the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions.

The NPRM invited comments on regulatory, economic, environmental, and energy aspects of the proposal.

The NPRM was prompted by fuel system reviews conducted by the manufacturer. The actions specified by the NPRM are intended to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Related Rulemaking

At the time we issued the NPRM, we issued five other NPRMs that also proposed to require modification of the FQIS:

- Docket No. FAA–2016–6139, Directorate Identifier 2015–NM–061–AD, for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes.
- Docket No. FAA–2016–6140, Directorate Identifier 2015–NM–059–AD, for certain The Boeing Company Model 777 airplanes.
- Docket No. FAA–2016–6141, Directorate Identifier 2015–NM–048–AD, for certain The Boeing Company Model 767 airplanes.
- Docket No. FAA–2016–6144, Directorate Identifier 2015–NM–088–AD, for certain Airbus Model A318, A319, A320, and A321 airplanes.
- Docket No. FAA–2016–6145, Directorate Identifier 2015–NM–056–AD, for The Boeing Company Model 747 airplanes.

Actions Since Previous NPRM Was Issued

Since we issued the NPRM, we have received a request from Airlines for America (A4A) to extend the comment period for some of the NPRMs referenced above. A4A stated that the NPRMs are controversial and could drive substantial costs, especially for cargo airlines. To be able to prepare informed and meaningful comments with coordinated consensus among its members, A4A requested a longer comment period to understand a number of factors, including related service information, data and safety analysis of the unsafe condition, and potential costs.

We agree with the request, and have determined that it is appropriate to extend the comment period for all of the NPRMs to give all interested persons additional time to examine the proposed requirements and submit comments. We have determined that extending the comment period until September 19, 2016, will not compromise the safety of the affected airplanes.

The comment period for Docket No. FAA–2016–6143 closes September 19, 2016.

Because no other portion of the proposal or other regulatory information has been changed, the entire proposal is not being republished.

Issued in Renton, Washington, on June 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14116 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6144; Directorate Identifier 2015–NM–088–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This document announces an extension of the comment period for the above-referenced NPRM, which proposed the adoption of a new airworthiness directive (AD) for certain Airbus Model A318, A319, and A320 series airplanes; Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. That NPRM invited comments concerning the proposed requirement to modify the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. This extension of the comment period is necessary to provide all interested persons an opportunity to present their views on the proposed requirements of that NPRM.

DATES: We must receive comments on the NPRM by September 19, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6144; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6144; Directorate Identifier 2015–NM–028–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A318, A319, and A320 series airplanes; Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. The NPRM published in the **Federal Register** on May 3, 2016 (81 FR 26487) ("the NPRM"). The NPRM proposed to require modifying the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions.

The NPRM invited comments on regulatory, economic, environmental, and energy aspects of the proposal.

The NPRM was prompted by fuel system reviews conducted by the manufacturer. The actions specified by the NPRM are intended to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Related Rulemaking

At the time we issued the NPRM, we issued five other NPRMs that also proposed to require modification of the FQIS:

- Docket No. FAA–2016–6139, Directorate Identifier 2015–NM–061–AD, for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes.
- Docket No. FAA–2016–6140, Directorate Identifier 2015–NM–059–AD, for certain The Boeing Company Model 777 airplanes.
- Docket No. FAA–2016–6141, Directorate Identifier 2015–NM–048–AD, for certain The Boeing Company Model 767 airplanes.
- Docket No. FAA–2016–6143, Directorate Identifier 2015–NM–028–AD, for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes), and Model A310 series airplanes.
- Docket No. FAA–2016–6145, Directorate Identifier 2015–NM–056–AD, for certain The Boeing Company Model 747 airplanes.

Actions Since Previous NPRM Was Issued

Since we issued the NPRM, we have received a request from Airlines for America (A4A) to extend the comment period. A4A stated that the NPRMs are controversial and could drive substantial costs, especially for cargo airlines. To be able to prepare informed and meaningful comments with coordinated consensus among its members, A4A requested a longer comment period to understand a number of factors, including related service information, data and safety analysis of the unsafe condition, and potential costs.

We agree with the request, and have determined that it is appropriate to extend the comment period for the NPRM to give all interested persons additional time to examine the proposed requirements and submit comments. We have determined that extending the comment period until September 19, 2016, will not compromise the safety of the affected airplanes.

The comment period for Docket No. FAA–2016–6144 closes September 19, 2016.

Because no other portion of the proposal or other regulatory information has been changed, the entire proposal is not being republished.

Issued in Renton, Washington, on June 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14115 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6145; Directorate Identifier 2015–NM–056–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This document announces an extension of the comment period for the above-referenced NPRM, which proposed the adoption of a new airworthiness directive (AD) for certain The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes. That NPRM invited comments concerning the proposed requirement to modify the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. This extension of the comment period is necessary to provide all interested persons an opportunity to present their views on the proposed requirements of that NPRM.

DATES: We must receive comments on the NPRM by September 19, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6145; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6506; fax: 425–917–6590; email: *Jon.Regimbal@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6145; Directorate Identifier 2015–NM–056–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes. The NPRM published in the **Federal Register** on May 3, 2016 (81 FR 26490) ("the NPRM"). The NPRM proposed to require modifying the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions.

The NPRM invited comments on regulatory, economic, environmental, and energy aspects of the proposal.

The NPRM was prompted by fuel system reviews conducted by the manufacturer. The actions specified by the NPRM are intended to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Related Rulemaking

At the time we issued the NPRM, we issued five other NPRMs that also proposed to require modification of the FQIS:

- Docket No. FAA–2016–6139, Directorate Identifier 2015–NM–061–AD, for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes.
- Docket No. FAA–2016–6140, Directorate Identifier 2015–NM–059–AD, for certain The Boeing Company Model 777 airplanes.
- Docket No. FAA–2016–6141, Directorate Identifier 2015–NM–048–AD, for certain The Boeing Company Model 767 airplanes.
- Docket No. FAA–2016–6143, Directorate Identifier 2015–NM–028–AD, for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes), and Model A310 series airplanes.
- Docket No. FAA–2016–6144, Directorate Identifier 2015–NM–088–AD, for Airbus Model A318, A319, A320, and A321 airplanes.

Actions Since Previous NPRM Was Issued

Since we issued the NPRM, we have received a request from Airlines for America (A4A) to extend the comment period. A4A stated that the NPRMs are controversial and could drive substantial costs, especially for cargo airlines. To be able to prepare informed and meaningful comments with coordinated consensus among its members, A4A requested a longer comment period to understand a number of factors, including related service information, data and safety analysis of the unsafe condition, and potential costs.

We agree with the request, and have determined that it is appropriate to extend the comment period for the NPRM to give all interested persons additional time to examine the proposed requirements and submit comments. We have determined that extending the comment period until September 19, 2016, will not compromise the safety of the affected airplanes.

The comment period for Docket No. FAA–2016–6145 closes September 19, 2016.

Because no other portion of the proposal or other regulatory information has been changed, the entire proposal is not being republished.

Issued in Renton, Washington, on June 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14112 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6141; Directorate Identifier 2015–NM–048–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This document announces an extension of the comment period for the above-referenced NPRM, which proposed the adoption of a new airworthiness directive (AD) for certain The Boeing Company Model 767 airplanes. That NPRM invited comments concerning the proposed requirement to modify the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. This extension of the comment period is necessary to provide all interested persons an opportunity to present their views on the proposed requirements of that NPRM.

DATES: We must receive comments on the NPRM by September 19, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6141; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6506; fax: 425–917–6590; email: *Jon.Regimbal@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6141; Directorate Identifier 2015–NM–048–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 767 airplanes. The NPRM published in the **Federal Register** on May 4, 2016 (81 FR 26747) ("the NPRM"). The NPRM proposed to require modifying the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions.

The NPRM invited comments on regulatory, economic, environmental, and energy aspects of the proposal.

The NPRM was prompted by fuel system reviews conducted by the manufacturer. The actions specified by the NPRM are intended to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Related Rulemaking

At the time we issued the NPRM, we issued five other NPRMs that also proposed to require modification of the FQIS:

- Docket No. FAA–2016–6139, Directorate Identifier 2015–NM–061–AD, for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes.
- Docket No. FAA–2016–6140, Directorate Identifier 2015–NM–059–AD, for certain The Boeing Company Model 777 airplanes.
- Docket No. FAA–2016–6143, Directorate Identifier 2015–NM–028–AD, for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes), and Model A310 series airplanes.
- Docket No. FAA–2016–6144, Directorate Identifier 2015–NM–088–AD, for Airbus Model A318, A319, A320, and A321 airplanes.
- Docket No. FAA–2016–6145, Directorate Identifier 2015–NM–056–AD, for certain The Boeing Company Model 747 airplanes.

Actions Since Previous NPRM Was Issued

Since we issued the NPRM, we have received a request from Airlines for

America (A4A) to withdraw the NPRM because of a specific concern regarding a yet-unpublished service bulletin. A4A stated that this service bulletin, which would add measures regarding removal of Kapton insulated wiring near the FQIS bundles, has been rejected by the FAA. A4A stated that there may be substantial changes to the proposed cost estimates that would influence the comments. A4A accordingly requested withdrawal of the NPRM until Boeing satisfies the FAA's concerns, and the costs of compliance can be estimated. A4A asserted that any delay will not substantially affect safety given the previously instituted flammability reduction measures that are already in place.

We disagree with the request to withdraw the NPRM. The FAA is currently reviewing service information related to Kapton wiring that may be installed near FQIS wires. The cost to remove existing Kapton wiring was not included in the NPRM for Model 767 airplanes; we do not anticipate that this cost will be significant.

While we do not agree to withdraw the NPRM, we have determined that it is appropriate to extend the comment period for the NPRM to give all interested persons additional time to examine the proposed requirements and submit comments. We have determined that extending the comment period until September 19, 2016, will not compromise the safety of the affected airplanes.

The comment period for Docket No. FAA–2016–6141 closes September 19, 2016.

Because no other portion of the proposal or other regulatory information has been changed, the entire proposal is not being republished.

Issued in Renton, Washington, on June 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14111 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6139; Directorate Identifier 2015–NM–061–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This document announces an extension of the comment period for the above-referenced NPRM, which proposed the adoption of a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. That NPRM invited comments concerning the proposed requirement to modify the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. This extension of the comment period is necessary to provide all interested persons an opportunity to present their views on the proposed requirements of that NPRM.

DATES: We must receive comments on the NPRM by September 19, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6139; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6506; fax: 425–917–6590; email: *Jon.Regimbal@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6139; Directorate Identifier 2015–NM–061–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. The NPRM published in the **Federal Register** on May 3, 2016 (81 FR 26485) ("the NPRM"). The NPRM proposed to require modifying the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions.

The NPRM invited comments on regulatory, economic, environmental, and energy aspects of the proposal.

The NPRM was prompted by fuel system reviews conducted by the manufacturer. The actions specified by the NPRM are intended to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Related Rulemaking

At the time we issued the NPRM, we issued five other NPRMs that also proposed to require modification of the FQIS:

- Docket No. FAA–2016–6140, Directorate Identifier 2015–NM–059–AD, for certain The Boeing Company Model 777 airplanes.
- Docket No. FAA–2016–6141, Directorate Identifier 2015–NM–048–AD, for certain The Boeing Company Model 767 airplanes.
- Docket No. FAA–2016–6143, Directorate Identifier 2015–NM–028–AD, for certain all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes), and Model A310 series airplanes.
- Docket No. FAA–2016–6144, Directorate Identifier 2015–NM–088–AD, for certain Airbus Model A318, A319, A320, and A321 airplanes.
- Docket No. FAA–2016–6145, Directorate Identifier 2015–NM–056–AD, for certain The Boeing Company Model 747 airplanes.

Actions Since Previous NPRM Was Issued

Since we issued the NPRM, we have received a request from Airlines for America (A4A) to extend the comment period for some of the NPRMs referenced above. A4A stated that the NPRMs are controversial and could drive substantial costs, especially for cargo airlines. To be able to prepare informed and meaningful comments with coordinated consensus among its members, A4A requested a longer comment period to understand a number of factors, including related service information, data and safety analysis of the unsafe condition, and potential costs.

We agree with the request, and have determined that it is appropriate to extend the comment period for all the NPRMs referenced above to give all interested persons additional time to examine the proposed requirements and submit comments. We have determined that extending the comment period until September 19, 2016, will not compromise the safety of the affected airplanes.

The comment period for Docket No. FAA–2016–6139 closes September 19, 2016.

Because no other portion of the proposal or other regulatory information has been changed, the entire proposal is not being republished.

Issued in Renton, Washington, on June 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14114 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2016–F–1444]

Styrene Information and Research Center; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by the Styrene Information and Research Center (SIRC), requesting that we amend our food additive regulations to no longer provide for the use of styrene as a synthetic flavoring substance and adjuvant in food because these uses of styrene have been abandoned.

DATES: The food additive petition was filed on May 16, 2016. Submit either electronic or written comments by August 15, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–F–1444 for "Styrene Information and Research Center; Filing of Food Additive Petition." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/*

regulatoryinformation/dockets/default.htm.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Judith Kidwell, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1071.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(b)(5)), we are giving notice that we have filed a food additive petition (FAP 6A4817), submitted by SIRC, c/o Keller and Heckman LLP, 1001 G Street NW., Suite 500 West, Washington, DC 20001. The petition proposes to amend § 172.515 (21 CFR 172.515) to no longer provide for the use of styrene (CAS Reg. No. 100–42–5) as a synthetic flavoring substance and adjuvant in food because these uses of styrene have been permanently abandoned.

II. Abandonment

Under section 409(i) of the FD&C Act, we "shall by regulation prescribe the procedure by which regulations under the foregoing provisions of this section may be amended or repealed, and such procedure shall conform to the procedure provided in this section for the promulgation of such regulations." Our regulations specific to administrative actions for food additives provide that the Commissioner of Food and Drugs, on his own initiative or on the petition of any interested person, under 21 CFR part 10, may propose the issuance of a regulation amending or repealing a regulation pertaining to a food additive or granting or repealing an exception for such additive (§ 171.130(a) (21 CFR 171.130(a))). These regulations further provide that any such petition shall include an assertion of facts, supported by data, showing that new information exists with respect to the food additive or that new uses have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the existing regulation or exemption may justify its amendment or appeal. New data must be furnished in the form specified in 21 CFR 171.1 and 171.100 for submitting petitions (§ 171.130(b)). Under these regulations, a petitioner may propose that we amend a food additive regulation if the petitioner can demonstrate that there are "old uses abandoned" for the relevant food additive. Such abandonment must be complete for any intended uses in the U.S. market. While section 409 of the FD&C Act and § 171.130 also provide for amending or revoking a food additive regulation based on safety, an amendment or revocation based on abandonment is not based on safety, but is based on the fact that regulatory authorization is no longer necessary because the use of that food additive has been abandoned.

Abandonment may be based on the abandonment of certain authorized food additive uses for a substance (*e.g.,* if a substance is no longer used in certain product categories), or on the abandonment of all authorized food additive uses of a substance (*e.g.,* if a substance is no longer being manufactured). If a petition seeks an amendment to a food additive regulation based on the abandonment of certain uses of the food additive, such uses must be adequately defined so that both the scope of the abandonment and any amendment to the food additive regulation are clear.

The petition submitted on behalf of SIRC contains public information and information collected from companies that produce styrene to support the petitioner's claim that styrene is no longer being manufactured, imported, or otherwise marketed for use as a synthetic flavoring substance and adjuvant in food in the U.S. market and that the manufacturers have abandoned the use of styrene for these uses. SIRC surveyed its membership, which contains over 95 percent of the current North American styrene industry, to verify that their members do not:

- Currently manufacture styrene for use as a synthetic flavoring substance and adjuvant in food in the United States;
- currently import styrene for use as a synthetic flavoring substance and adjuvant in food into the United States;
- intend to manufacture or import styrene for use as a synthetic flavoring substance and adjuvant in food in the United States in the future; and
- currently maintain any inventory of styrene for sale or distribution into commerce that is intended to be marketed for use as a synthetic flavoring substance and adjuvant in food in the United States.

SIRC also has confirmed that no foreign manufacturers appear to be using or marketing styrene for use as a synthetic flavoring agent or adjuvant in food.

We expressly request comments on SIRC's request to amend § 172.515 of the food additive regulations to no longer permit the use of styrene as a synthetic flavoring substance and adjuvant in food. As noted, the basis for the proposed amendment is that the uses of styrene as a synthetic flavoring substance and adjuvant in food have been permanently abandoned. Accordingly, we request comments that address whether these uses of styrene have been completely abandoned, such as information on whether food containing styrene used as a synthetic flavoring substance and adjuvant are currently being introduced or delivered for introduction into the U.S. market. We are not currently aware of information that suggests continued use of styrene as a synthetic flavoring substance and adjuvant in food. We are providing the public with 60 days to submit comments. We anticipate that some interested persons may wish to provide us with certain information they consider to be trade secret or confidential commercial information (CCI) that would be exempt under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552). Interested persons may claim information that is submitted to us as CCI or trade secret by clearly marking both the document and the specific information as "confidential." Information so marked will not be disclosed except in accordance with the Freedom of Information Act and our disclosure regulations (21 CFR part 20). For electronic submissions to *http://www.regulations.gov,* indicate in the "comments" box of the appropriate docket that your submission contains confidential information. Interested persons must also submit a copy of the comment that does not contain the information claimed as confidential for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice.

We are not requesting comments on the safety of these uses of styrene because such information is not relevant to abandonment, which is the basis of the proposed action. We will not consider any comments addressing the safety of styrene or containing safety information on styrene in our evaluation of this petition.

We have determined under 21 CFR 25.32(m) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 9, 2016.

Dennis M. Keefe,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2016–14107 Filed 6–14–16; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0449; FRL–9947–62–Region 4]

Air Plan Approval; North Carolina; Regional Haze Progress Report

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of North Carolina through the North Carolina Division of Air Quality (NC DAQ) on May 31, 2013. North Carolina's May 31, 2013, SIP revision (Progress Report) addresses requirements of the Clean Air Act (CAA or Act) and EPA's rules that require each state to submit periodic reports describing progress towards reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the state's existing SIP addressing regional haze (regional haze plan). EPA is proposing to approve North Carolina's Progress Report on the basis that it addresses the progress report and adequacy determination requirements for the first implementation period for regional haze.

DATES: Comments must be received on or before July 15, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0449 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman can be reached by phone at (404) 562–9043 and via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the Regional Haze Rule,[1] each state was required to submit its first implementation plan addressing regional haze visibility impairment to EPA no later than December 17, 2007. *See* 40 CFR 51.308(b). North Carolina submitted its regional haze plan on that date, and like many other states subject to the Clean Air Interstate Rule (CAIR), relied on CAIR to satisfy best available retrofit technology (BART) requirements for emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) from electric generating units (EGUs) in the State. On June 7, 2012, EPA finalized a limited disapproval of North Carolina's December 17, 2007 regional haze plan submission because of deficiencies arising from the State's reliance on CAIR to satisfy certain regional haze requirements. *See* 77 FR 33642. In a separate action taken on June 27, 2012, EPA finalized a limited approval of North Carolina's December 17, 2007, regional haze plan submission, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–51.308. *See* 77 FR 38185. On October 31, 2014, the State submitted a regional haze plan revision to correct the deficiencies identified in the June 27, 2012, limited disapproval by replacing reliance on CAIR with reliance on the State's Clean Smokestacks Act (CSA) as an alternative to NO_X and SO_2 BART for BART-eligible EGUs formerly subject to CAIR. EPA approved that SIP revision on May 13, 2016, resulting in a full approval of North Carolina's regional haze plan.

Each state is also required to submit a progress report in the form of a SIP revision every five years that evaluates progress towards the RPGs for each mandatory Class I Federal area within the state and for each mandatory Class I Federal area outside the state which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). Each state is also required to submit, at the same time as the progress report, a determination of the adequacy of its existing regional haze plan. *See* 40 CFR 51.308(h). The first progress report is due five years after submittal of the initial regional haze plan.

On May 31, 2013, as required by 40 CFR 51.308(g), NC DAQ submitted to EPA, in the form of a revision to North Carolina's SIP, a report on progress made towards the RPGs for Class I areas in the State and for Class I areas outside the State that are affected by emissions from sources within the State. This submission also includes a negative declaration pursuant to 40 CFR 51.308(h)(1) that the State's regional haze plan is sufficient in meeting the requirements of the Regional Haze Rule (40 CFR 51.300 *et seq.*). EPA is proposing to approve North Carolina's Progress Report on the basis that it satisfies the requirements of 40 CFR 51.308(g) and (h) now that EPA has fully approved the State's regional haze plan.

II. Requirements for the Regional Haze Progress Report and Adequacy Determinations

A. Regional Haze Progress Report

Under 40 CFR 51.308(g), states must submit a regional haze progress report as a SIP revision every five years and must address, at a minimum, the seven elements found in 40 CFR 51.308(g). As described in further detail in section III below, 40 CFR 51.308(g) requires: (1) A description of the status of measures in the approved regional haze plan; (2) a summary of emissions reductions achieved; (3) an assessment of visibility conditions for each Class I area in the state; (4) an analysis of changes in emissions from sources and activities within the state; (5) an assessment of any significant changes in anthropogenic emissions within or outside the state that have limited or impeded progress in Class I areas impacted by the state's sources, (6) an assessment of the sufficiency of the approved regional haze plan; and (7) a review of the state's visibility monitoring strategy.

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[1] 40 CFR part 51, subpart P.

B. Adequacy Determinations of the Current Regional Haze Plan

Under 40 CFR 51.308(h), states are required to submit, at the same time as the progress report, a determination of the adequacy of their existing regional haze plan and to take one of four possible actions based on information in the progress report. As described in further detail in section III below, 40 CFR 51.308(h) requires states to: (1) Submit a negative declaration to EPA that no further substantive revision to the state's existing regional haze plan is needed; (2) provide notification to EPA (and to other state(s) that participated in the regional planning process) if the state determines that its existing regional haze plan is or may be inadequate to ensure reasonable progress at one or more Class I areas due to emissions from sources in other state(s) that participated in the regional planning process, and collaborate with these other state(s) to develop additional strategies to address deficiencies; (3) provide notification with supporting information to EPA if the state determines that its existing regional haze plan is or may be inadequate to ensure reasonable progress at one or more Class I areas due to emissions from sources in another country; or (4) revise its regional haze plan to address deficiencies within one year if the state determines that its existing regional haze plan is or may be inadequate to ensure reasonable progress in one or more Class I areas due to emissions from sources within the state.

III. What is EPA's analysis of North Carolina's regional haze progress report and adequacy determination?

On May 31, 2013, NC DAQ submitted a revision to North Carolina's regional haze plan to address progress made towards the RPGs for Class I areas in the State and for Class I areas outside the State that are affected by emissions from sources within North Carolina. This submittal also includes a determination of the adequacy of the State's existing regional haze plan. North Carolina has five Class I areas within its borders: Great Smoky Mountains National Park (GSMNP), Joyce Kilmer-Slickrock Wilderness Area (JOKI), Linville Gorge Wilderness Area (LIGO), Shining Rock Wilderness Area (SHRO), and Swanquarter Wildlife Refuge (SWAN). Both the Great Smoky Mountains and Joyce Kilmer-Slickrock Areas are located in North Carolina and Tennessee. In its regional haze plan, the State also identified, through an area of influence modeling analysis based on back trajectories, one Class I area in one neighboring state potentially impacted by North Carolina sources: James River Face Wilderness Area in Virginia. *See* 77 FR 11858, 11869 (February 28, 2012).

A. Regional Haze Progress Report

The following sections summarize: (1) Each of the seven elements that must be addressed by a progress report under 40 CFR 51.308(g); (2) how North Carolina's Progress Report addressed each element; and (3) EPA's analysis and proposed determination as to whether the State satisfied each element.

1. Status of Control Measures

40 CFR 51.308(g)(1) requires a description of the status of implementation of all measures included in the regional haze plan for achieving RPGs for Class I areas both within and outside the state.

The State evaluated the status of measures included in its 2007 regional haze plan in accordance with 40 CFR 51.308(g)(1). Specifically, in its Progress Report, North Carolina summarizes the status of the emissions reduction measures that were included in the final iteration of the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) regional haze emissions inventory and RPG modeling used by the State in developing its regional haze plan. The measures include, among other things, applicable Federal programs (*e.g.*, mobile source rules, Maximum Achievable Control Technology standards), Federal consent agreements, and Federal and state control strategies for EGUs.[2] The State also discusses the status of several measures that were not included in the final VISTAS emissions inventory and were not relied upon in the initial regional haze plan to meet RPGs. The State notes that the emissions reductions from these measures will help ensure Class I areas impacted by North Carolina sources achieve their RPGs. In aggregate, as noted in sections III.A.2 and III.A.6 of this document, the emissions reductions from the identified measures are expected to exceed the emissions reductions projected in North Carolina's regional haze plan.

EPA proposes to find that North Carolina's analysis adequately addresses 40 CFR 51.308(g)(1) for the reasons discussed below. The State documents the implementation status of measures from its regional haze plan in addition to describing additional measures not originally accounted for in the final VISTAS emissions inventory that came into effect since the VISTAS analyses for the regional haze plan were completed. The State's Progress Report also provides detailed information on EGU control strategies in its regional haze plan and the status of existing and future expected controls for North Carolina's EGUs because, in its regional haze plan, North Carolina identified SO_2 emissions from coal-fired EGUs as the key contributor to regional haze in the VISTAS region. North Carolina discusses the status of the CSA, which the State identified as the primary state control strategy in its regional haze plan, and the resulting emissions reductions.[3] Under the CSA, power plants were required to reduce their NO_X emissions by 77 percent in 2009 and their SO_2 emissions by 73 percent in 2013. The State notes that all of the CSA subject units are controlled with a scrubber for SO_2 control and a selective catalytic reduction unit or a selective non-catalytic reduction for NO_X control, or have retired, which will result in more SO_2 and NO_X emissions reductions than those projected in the regional haze plan.

2. Emissions Reductions and Progress

40 CFR 51.308(g)(2) requires a summary of the emissions reductions achieved in the state through the measures subject to 40 CFR 51.308(g)(1).

In its regional haze plan and Progress Report, North Carolina focuses its assessment on SO_2 emissions from EGUs because of VISTAS' findings that ammonium sulfate accounted for more than 70 percent of the visibility-impairing pollution in the VISTAS states and that SO_2 point source emissions in 2018 represent more than 95 percent of the total SO_2 emissions in the State.[4] As discussed in section III.A.5, below, North Carolina determined that sulfates continue to be the largest contributor to regional haze for Class I areas in the State.

In its Progress Report, North Carolina presents SO_2 emissions data for EGUs in the State and notes that North Carolina's EGU sector represents over 50 percent of statewide SO_2 emissions from stationary sources. SO_2 emissions reductions from 2002 to 2011 for North Carolina EGUs (387,373 tpy) are greater than the SO_2 emissions reductions from 2002 to 2018 estimated in North Carolina's regional haze plan for these EGUs (367,528 tpy). Additionally, the State updated the 2018 SO_2 emissions projections for North Carolina EGUs in its regional haze plan. These updated 2018 SO_2 EGU emissions projections are approximately 80 percent lower than the projected 2018 SO_2 emissions in the regional haze plan.[5]

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[2] North Carolina's progress report discusses the status of CAIR, CSAPR, and the CSA as of the date of submission. As noted above, North Carolina subsequently submitted a SIP revision to replace its reliance on CAIR as NO_X and SO_2 BART for BART-eligible units formerly subject to CAIR with reliance on the CSA as a BART Alternative, and EPA approved that SIP revision on May 13, 2016.

[3] According to the State, in 2011, regulated sources under the CSA emitted 73,454 tons per year (tpy) of SO_2 and 39,284 tpy of NO_X, well below the CSA's annual emissions caps for SO_2 and NO_X. The State also notes that the 2018 current emissions projection of SO_2 from the sources subject to CSA is 18,420 tpy, which is approximately 80 percent lower than the original 2018 projections used in the North Carolina regional haze plan.

[4] For additional information, see North Carolina's December 17, 2007, regional haze plan at page 24.

North Carolina states that coal-fired EGUs in North Carolina emitted a total of 370,000 tpy of SO_2 in 2007, whereas in 2011, these same EGUs emitted a total of 73,000 tpy of SO_2, a reduction of 297,000 tpy, due largely to the installation and operation of scrubbers. The State expects that future SO_2 emissions will decline further from more natural gas use and the continued retirement of older, smaller coal-fired EGUs without scrubbers. NO_X emissions from these EGUs dropped from a total of approximately 57,400 tpy in 2007 to approximately 39,300 tpy of NO_X in 2011, an 18,100 tpy reduction.

North Carolina identified the retirement of over 100 EGUs at 35 facilities located in eight nearby states that VISTAS modeling indicates potentially impact visibility in North Carolina's Class I areas. These units emitted more than 550,000 tpy of SO_2 in 2011. The State believes that this is another indicator that the Class I areas in North Carolina are on track to meet their RPGs. North Carolina also discussed the SO_2 emissions reductions that occurred at non-EGU facilities identified in its regional haze plan as contributing one percent or more to visibility impairment at any Class I area.

EPA proposes to conclude that North Carolina has adequately addressed 40 CFR 51.308(g)(2). As discussed above, the State provides estimates, and where available, actual emissions reductions of visibility-impairing pollutants resulting from the measures relied upon in its regional haze plan. The State appropriately focused on SO_2 emissions from its EGUs in its Progress Report because the State had previously identified these emissions as the most significant contributors to visibility impairment at North Carolina's Class I areas and those areas that North Carolina sources impact.

3. Visibility Progress

40 CFR 51.308(g)(3) requires that states with Class I areas provide the following information for the most impaired and least impaired days for each area, with values expressed in terms of five-year averages of these annual values:[6] (i) Current visibility conditions; (ii) the difference between current visibility conditions and baseline visibility conditions; and (iii) the change in visibility impairment over the past five years.

North Carolina provides figures with visibility monitoring data that address the three requirements of 40 CFR 51.308(g)(3) for the State's five Class I areas. North Carolina reported current conditions as the 2006–2010 five-year time period and used the 2000–2004 baseline period for its Class I areas.[7] Table 1, below, shows the current visibility conditions and the difference between current visibility conditions and baseline visibility conditions.

TABLE 1—BASELINE VISIBILITY, CURRENT VISIBILITY, AND VISIBILITY CHANGES IN CLASS I AREAS IN NORTH CAROLINA

Class I area	Baseline (2000–2004)	Current (2009–2013)	Difference
20% Worst Days			
Great Smoky Mountain National Park	30.3	26.6	−3.7
Joyce Kilmer-Slickrock	30.3	26.6	−3.7
Linville Gorge	28.6	25.1	−3.5
Shining Rock	28.5	25.8	−2.7
Swanquarter	24.7	24.2	−0.5
20% Best Days			
Great Smoky Mountain National Park	13.6	12.3	−1.3
Joyce Kilmer-Slickrock	13.6	12.3	−1.3
Linville Gorge	11.1	11	−0.1
Shining Rock	8.2	7.25	−0.95
Swanquarter	12	12.9	0.9

All North Carolina Class I areas saw an improvement in visibility on the 20 percent worst days from 2006–2010 and between baseline and 2006–2010 conditions. All North Carolina Class I areas except for Swanquarter Wildlife Refuge saw an improvement in visibility on the 20 percent best days from 2006–2010 and between baseline and 2006–2010 conditions.

At Swanquarter, a 0.9 dv increase was recorded in the 20 percent best-day average between 2006–2010 conditions (12.9 dv) and the 2000–2004 baseline (12.0 dv). This could be due, in part, to the fact that the visibility data for 2008 at Swanquarter did not meet EPA's data completeness criteria and was therefore removed from the 2006–2010 average, resulting in a four-year average during this review period.[8] Regardless, North Carolina believes that planned changes to operating status and emission controls on large sources within the Swanquarter area of influence provide sufficient evidence that by 2018, the 20 percent best days will be protected.[9] Furthermore, the 20 percent best-day average at Swanquarter has continued to improve, dropping to 12.2 dv for 2007–2011.[10] Based on the visibility data reported in the Western Regional Air

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[5] See page 32 of the May 31, 2013, submission.

[6] The "most impaired days" and "least impaired days" in the regional haze refers to the average visibility impairment (measured in deciviews) for the 20 percent of monitored days in a calendar year with the highest and lowest amount of visibility impairment, respectively, averaged over a five-year period. 40 CFR 51.301.

[7] For the first regional haze plans, "baseline" conditions were represented by the 2000–2004 time period. *See* 64 FR 35730 (July 1, 1999).

[8] *See* USEPA (2003) "Guidance for Tracking Progress Under the Regional Haze Rule," *http://www.epa.gov/ttn/oarpg/t1/memoranda/rh_tpurhr_gd.pdf,* pp. 2–8.

[9] *See* pp. 43–49 of the May 31, 2013, submission.

[10] *See* pp. 41–42 of the May 31, 2013, submission.

Partnership Technical Support System, the 20 percent best-day five year averages have continued to improve through 2014 and have dropped below the baseline beginning with the 2008–2012 average.[11]

North Carolina's Progress Report includes revised RPGs for the five Class I areas within the State. North Carolina's original RPGs were based on the VISTAS modeling run available at the time of the 2007 SIP revision. In 2008, VISTAS provided updated modeling results that changed the modeled progress for North Carolina's Class I areas. North Carolina seeks to include revised RPGs that reflect this modeled progress. Table 2 identifies the RPGs for North Carolina's Class I areas in the State's regional haze plan and the updated RPGs proposed in its Progress Report.

TABLE 2—UPDATED RPGS FOR NORTH CAROLINA'S CLASS 1 AREAS

[Deciviews]

Class I areas	RPG 20% worst days (2007 regional haze plan)	RPG 20% worst days (2013 progress report)	RPG 20% best days (2007 regional haze plan)	RPG 20% best days (2013 progress report)
GSMNP	23.7	23.5	12.2	12.1
JOKI	23.7	23.5	12.2	12.1
LIGO	22.0	21.7	9.6	9.5
SHRO	22.1	21.9	6.9	6.9
SWAN	20.4	20.3	11.0	10.9

EPA proposes to approve the updated RPGs for North Carolina's Class I areas because they reflect more recent modeling. Also, EPA proposes to conclude that North Carolina has adequately addressed 40 CFR 51.308(g)(3) because the State provides the information regarding visibility conditions and visibility changes necessary to meet the requirements of the regulation. The Progress Report includes current conditions based on the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring data for the years 2006–2010, the difference between current visibility conditions and baseline visibility conditions, and the change in visibility impairment over the five-year period 2006–2010.

4. Emissions Tracking

40 CFR 51.308(g)(4) requires an analysis tracking emission changes of visibility-impairing pollutants from the state's sources by type or category over the past five years based on the most recent updated emissions inventory.

In its Progress Report, North Carolina presents data from statewide actual emissions inventories for 2008 and projected emissions inventories developed for the years 2009 and 2010. The State compares these data to the baseline emissions inventory for 2002. The pollutants inventoried include volatile organic compounds (VOC), NO_X, fine particulate matter ($PM_{2.5}$), and SO_2. The emissions inventories include the following source classifications: Point, area, non-road mobile, and on-road mobile sources.

North Carolina includes the emissions inventories from the regional haze plan for 2002 and 2009, and summarizes emissions data from EPA's 2008 National Emissions Inventory. North Carolina's analysis shows that 2008 emissions are lower than 2002 emissions. North Carolina estimates on-road mobile source emissions in the 2008 and 2010 inventories using the MOVES2010a model. This model tends to estimate higher emissions than its previous counterpart, the MOBILE6 model used by the State to estimate on-road mobile source emissions for the 2002 and 2009 inventories, especially for NO_X emissions. North Carolina has concluded that MOVES model predictions for NO_X can be 1.7 to 2.1 times higher than MOBILE6. Despite the change in methodology, a declining trend in all pollutants can be seen between 2002 and 2008 as seen in Table 4.

North Carolina also includes an emission inventory for 2010 in its Progress Report. The State estimates 2010 point source emissions by taking the emissions reported by sources for 2010 and adding the latest emissions for the small sources that only report emissions every five years. This procedure differs from the procedure used by the State in its regional haze plan that included only those sources that reported emissions in 2002. In its 2010 inventory, North Carolina estimated that small sources that did not report contribute one percent of total NO_X emissions, seven percent of total VOC emissions, one percent of total SO_2 emissions, and seven percent of total $PM_{2.5}$ emissions. North Carolina estimates area source emissions by growing the existing 2007 emissions inventory to 2010 and estimates non-road mobile source emissions using the EPA's NONROAD2008 model for those sources covered by the model and growing the 2007 airport, locomotive, and commercial marine emissions to 2010.

North Carolina estimates on-road mobile source emissions for 2010 using MOVES2010a with the latest vehicle miles traveled (VMT) and speed data. If 2010 speeds and VMT were not available for a particular county, interpolated or projected 2010 data was used. Using MOVES2010a, the on-road mobile emissions are higher than those that would be predicted using the older model. As seen in Tables 3 and 5, the 2010 emissions inventory is significantly lower than the 2002 emissions inventory despite including additional stationary point sources and the use of MOVES, which predicts higher NO_X emissions than its predecessor MOBILE6.2.

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[11] *See http://vista.cira.colostate.edu/tss/Results/HazePlanning.aspx* Web site for dv between 2011–2014.

TABLE 3—2002 EMISSIONS INVENTORY SUMMARY FOR NORTH CAROLINA

[tpy]

Source category	VOC	NO_X	SO_2	$PM_{2.5}$
Point	61,484	196,731	522,093	26,953
Area	250,044	41,517	5,815	83,520
On-road Mobile	263,766	327,329	12,420	4,623
Non-road Mobile	94,480	84,284	7,693	7,348
Total	669,774	649,861	548,021	122,444

TABLE 4—ACTUAL 2008 ANNUAL EMISSION SUMMARY FOR NORTH CAROLINA

[tpy]

Source category	VOC	NO_X	SO_2	$PM_{2.5}$
Point	39,053	97,879	274,541	27,987
Area	149,264	43,672	13,937	48,807
On-road Mobile	122,503	253,849	1,190	7,895
Non-road Mobile	72,754	52,469	980	4,924
Total	383,573	447,869	290,648	89,613

TABLE 5—2010 EMISSIONS INVENTORY SUMMARY FOR NORTH CAROLINA

[tpy]

Source category	VOC	NO_X	SO_2	$PM_{2.5}$
Point	42,504	90,155	151,210	13,966
Area	83,274	11,353	5,105	23,114
On-road Mobile	101,731	256,381	1,205	8,905
Non-road Mobile	66,773	65,353	2,829	5,455
Total	294,281	423,242	160,350	51,441

When comparing the 2010 emissions (Table 5) with the projected 2009 emissions (Table 6), the total emissions of each pollutant are lower in 2010 with the exception of NO_X. The slight increase in 2010 NO_X emissions is likely due to the use of MOBILE6 to estimate on-road mobile source NO_X emissions for 2009 and the use of MOVES to estimate on-road mobile source NO_X emissions for 2010. As noted above, MOVES predicts higher NO_X emissions than MOBILE6.

TABLE 6—2009 EMISSIONS INVENTORY SUMMARY FOR NORTH CAROLINA

[tpy]

Source category	VOC	NO_X	SO_2	$PM_{2.5}$
Point	62,161	101,236	284,802	26,360
Non-road Mobile	74,056	70,997	1,892	5,760
Area	200,873	45,382	6,281	90,729
On-road Mobile	168,676	201,609	1,503	3,493
Total	505,766	419,224	294,478	126,342

EPA proposes to conclude that North Carolina has adequately addressed 40 CFR 51.308(g)(4). North Carolina tracked changes in emissions of visibility-impairing pollutants from 2002–2010 for all source categories and analyzed trends in emissions from 2002–2010, the most current quality-assured data available for these units at the time of progress report development. The 2010 emissions were also compared to the projected 2009 emissions, which were with the exception of NO_X, as discussed above. While ideally the five-year period to be analyzed for emissions inventory changes is the time period since the current regional haze plan was submitted, there is an inevitable time lag in developing and reporting complete emissions inventories once quality-assured emissions data becomes available. Therefore, EPA believes that there is some flexibility in the five-year time period that states can select.

5. Assessment of Changes Impeding Visibility Progress

40 CFR 51.308(g)(5) requires an assessment of any significant changes in anthropogenic emissions within or outside the state that have occurred over the past five years that have limited or impeded progress in reducing pollutant emissions and improving visibility in Class I areas impacted by the state's sources.

In its Progress Report, North Carolina documented that sulfates, which are formed from SO_2 emissions, continue to be the biggest single contributor to regional haze for Class I areas in the State and therefore focused its analysis on large SO_2 emissions from point sources. In addressing the requirements at 40 CFR 51.308(g)(5), North Carolina references its analyses that SO_2 emissions from point sources show an overall downward trend over the period 2006 to 2010 and examines other potential pollutants of concern affecting visibility in Class I areas in North Carolina. After ammonium sulfate, primary organic matter is the next largest contributor to visibility impairment at Class I areas in North Carolina. The State demonstrates that there are no significant changes in emissions of SO_2, $PM_{2.5}$, or NO_X that have impeded progress in reducing emissions and improving visibility in Class I areas impacted by North Carolina sources. Furthermore, the Progress Report shows that the State is on track to meeting its 2018 RPGs for Class I areas in North Carolina. For these reasons, EPA proposes to conclude that North Carolina's Progress Report has adequately addressed 40 CFR 51.308(g)(5).

6. Assessment of Current Strategy

40 CFR 51.308(g)(6) requires an assessment of whether the current regional haze plan is sufficient to enable the state, or other states, to meet the RPGs for Class I areas affected by emissions from the state.

The State believes that it is on track to meet the 2018 RPGs for the North Carolina Class I areas and will not impede Class I areas outside of North Carolina from meeting their RPGs based on the trends in visibility and emissions presented in its Progress Report. In its Progress Report, North Carolina provided reconstructed light extinction figures for the 20 percent worst days for all Class I areas in the Southeast for 2006 through 2010. The 20 percent worst days extinction clearly demonstrates that sulfates continue to be the major concern, with EGUs being the largest contributor. As identified in Table 3–1 of the Progress Report, the State estimates that SO_2 emissions from EGUs in North Carolina have decreased by approximately 387,400 tons per year from 2002 to 2011 and expects that these emissions will continue to decrease through the first regional haze planning period.

The only coal-fired EGU in North Carolina which is in the area of influence (as defined by North Carolina's methodology) of the James River Face Class I area in Virginia was retired in April 2012. The SO_2 emission reductions resulting from this retirement are expected to contribute to achieving the RPGs for the James River Face Class I area.

EPA proposes to conclude that North Carolina has adequately addressed 40 CFR 51.308(g)(6). EPA views this requirement as a qualitative assessment that should evaluate emissions and visibility trends and other readily available information, including expected emissions reductions associated with measures with compliance dates that have not yet become effective. In its assessment, the State references the improving visibility trends and the downward emissions trends in the State, with a focus on SO_2 emissions from North Carolina EGUs. These trends support the State's determination that the State's regional haze plan is sufficient to meet RPGs for Class I areas within and outside the State impacted by North Carolina sources.

7. Review of Current Monitoring Strategy

40 CFR 51.308(g)(7) requires a review of the state's visibility monitoring strategy and an assessment of whether any modifications to the monitoring strategy are necessary.

In its Progress Report, North Carolina summarizes the existing monitoring network in North Carolina and in Tennessee to monitor visibility in North Carolina's Class I areas in North Carolina and concludes that no modifications to the existing visibility monitoring strategy are necessary. The primary monitoring network for regional haze, both nationwide and in North Carolina, is the IMPROVE network. There are currently three IMPROVE sites in North Carolina (LIGO, SHRO, and SWAN). In addition, an IMPROVE site just across the border in Tennessee serves as the monitoring site for both the Great Smoky Mountains National Park and Joyce Kilmer-Slickrock Wilderness Area, both of which lie partly in Tennessee and partly in North Carolina.

The State also explains the importance of the IMPROVE monitoring network for tracking visibility trends at Class I areas in North Carolina. North Carolina states that data produced by the IMPROVE monitoring network will be used nearly continuously for preparing the 5-year progress reports and the 10-year SIP revisions, each of which relies on analysis of the preceding five years of data, and thus, the monitoring data from the IMPROVE sites needs to be readily accessible and to be kept up to date. The VIEWS Web site has been maintained by VISTAS and the other Regional Planning Organizations to provide ready access to the IMPROVE data and data analysis tools.

In addition to the IMPROVE measurements, some ongoing long-term limited monitoring supported by Federal Land Managers provides additional insight into progress toward regional haze goals. North Carolina benefits from the data from these measurements, but is not responsible for associated funding decisions to maintain these measurements into the future.

A continuous nitrate monitor operates at the Millbrook site in Raleigh and a second continuous nitrate monitor operates at the Rockwell monitoring site in Rowan County. The State plans to operate these monitors as long as funding and supplies allow. North Carolina began operating a continuous sulfate monitor at the Millbrook in August 2007 and is currently operating aethalometers at the Millbrook and Rockwell sites.

In addition, the NC DAQ and the local air agencies in the State operate a comprehensive $PM_{2.5}$ network of the filter based Federal reference method monitors, continuous mass monitors, filter-based speciated monitors, and continuous speciated monitors. These $PM_{2.5}$ measurements help the NC DAQ characterize air pollution levels in areas across the State, and therefore aid in the analysis of visibility improvement in and near the Class I areas in North Carolina.

EPA proposes to conclude that North Carolina has adequately addressed the sufficiency of its monitoring strategy as required by 40 CFR 51.308(g)(7). The State reaffirmed its continued reliance upon the IMPROVE monitoring network; assessed its entire visibility monitoring network, including additional continuous sulfate and $PM_{2.5}$ monitors, used to further understand visibility trends in the State; and determined that no changes to its monitoring strategy are necessary.

B. Determination of Adequacy of Existing Regional Haze Plan

Under 40 CFR 51.308(h), states are required to take one of four possible actions based on the information gathered and conclusions made in the progress report. The following section summarizes: (1) The action taken by North Carolina under 40 CFR 51.308(h); (2) North Carolina's rationale for the selected action; and (3) EPA's analysis and proposed determination regarding the State's action.

In its Progress Report, North Carolina took the action provided for by 40 CFR 51.308(h)(1), which allows a state to submit a negative declaration to EPA if the state determines that the existing regional haze plan requires no further substantive revision at this time to achieve the RPGs for Class I areas affected by the state's sources. The basis for the State's negative declaration is the findings from the Progress Report, including the findings that: Visibility has improved at Class I areas (with the exception of the best-days visibility at SWAN as discussed above) in North Carolina; SO_2 emissions from the State's sources have decreased beyond the 2018 projections in the regional haze plan; additional EGU control measures not relied upon in the State's regional haze plan have occurred or will occur in the implementation period; and the EGU SO_2 emissions in North Carolina are already below the levels projected for 2018 in the regional haze plan and are expected to continue to trend downward. EPA proposes to conclude that North Carolina has adequately addressed 40 CFR 51.308(h) because the visibility trends at the Class I areas impacted by the State's sources and the emissions trends of the State's largest emitters of visibility-impairing pollutants indicate that the RPGs for Class I areas impacted by source in North Carolina will be met.

IV. Proposed Action

EPA is proposing to approve North Carolina's Regional Haze Progress Report, SIP revision, submitted by the State on May 31, 2013, as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and (h). EPA also proposes to approve the updated RPGs for North Carolina's Class I areas.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 1, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–14036 Filed 6–14–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0603; FRL–9947–67–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Philadelphia County Reasonably Available Control Technology Under the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions pertain to a demonstration that Philadelphia County (Philadelphia) meets the requirements for reasonably available control technology (RACT) of the Clean Air Act (CAA) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) as ozone precursors for the 1997 8-hour ozone national ambient air quality standards (NAAQS). In this rulemaking action, EPA is proposing to approve three separate SIP revisions addressing RACT under the 1997 8-hour ozone NAAQS for Philadelphia, including new or revised source-specific RACT determinations for fifteen major sources of NO_X and/or VOC and certifications that certain previous source-specific RACT determinations for major sources of NO_X and/or VOC continue to adequately represent RACT under the 1997 8-hour ozone NAAQS. EPA also proposes to convert the prior conditional approval of the Philadelphia RACT demonstration for the 1997 8-hour ozone NAAQS to full approval, as Pennsylvania has met the obligations associated with the conditional approval. EPA therefore proposes to find that Pennsylvania has met all applicable RACT requirements under the CAA for the 1997 8-hour ozone NAAQS for Philadelphia. This action is being taken under the CAA.

DATES: Written comments must be received on or before July 15, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2008–0603 at *http://www.regulations.gov,* or via email to *Fernandez.cristina@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

SUPPLEMENTARY INFORMATION: On June 27, 2014, February 18, 2015, and April 26, 2016, the Pennsylvania Department of Environmental Protection (PADEP) submitted on behalf of Philadelphia Air Management Services (AMS) three separate revisions to its SIP to satisfy the RACT requirements for the 1997 8-hour ozone NAAQS for Philadelphia. Altogether, the Philadelphia RACT SIP revisions are intended to fulfill the conditions in EPA's December 13, 2013 conditional approval. 78 FR 75902.

I. Background

A. General

Ground level ozone pollution (commonly referred to as smog) is formed when VOC react with NO_X in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA requires all nonattainment areas to apply controls on VOC and NO_X emission sources to achieve emission reductions. Among effective control measures, RACT controls are a major group for reducing VOC and NO_X emissions from stationary sources.

Since the 1970's, EPA has consistently interpreted RACT to mean the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility.[1] Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for attainment of the NAAQS, including emissions reductions from existing sources through adoption of RACT. Sections 182(b)(2) and (f)(1) of the CAA require states with moderate, or worse, ozone nonattainment areas to implement RACT controls on each category of stationary sources covered by a control technique guideline (CTG) document issued by EPA and on all major stationary sources of VOC and NO_X emissions located in the area.[2] Pursuant to section 184(b) of the CAA, the same requirements for sources of NO_X and VOC apply to any areas in an ozone transport region (OTR) established under section 184(a), therefore including marginal and moderate nonattainment areas as well attainment areas within an OTR. A single OTR has been established, comprised of 12 eastern states, or portions thereof, and the District of Columbia (hereafter, "the OTR"). The entire Commonwealth of Pennsylvania is part of the OTR.

On July 18, 1997 (62 FR 38856), EPA revised the NAAQS for ground-level ozone, setting at 0.08 parts per million (ppm) averaged over an 8-hour time frame. On April 15, 2004, EPA issued final designations for the 1997 8-hour ozone NAAQS, which included Philadelphia County as part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE moderate ozone nonattainment area. 69 FR 23858, at 23931 (April 30, 2004). At the same time, EPA published the first phase of its final rule to implement the 1997 8-hour ozone NAAQS (Phase I Ozone Implementation Rule), in which EPA revoked the previous 1-hour ozone NAAQS for most areas of the country, effective on June 15, 2005, and established anti-backsliding principles to transition from implementing the revoked 1-hour ozone NAAQS to the more protective 1997 8-hour ozone NAAQS, as codified in 40 CFR 51.905.[3] The nonattainment designation for Philadelphia under the 1997 8-hour ozone NAAQS, and its location in the OTR, triggered the Commonwealth's obligation to submit a SIP revision addressing how it meets the CAA RACT requirements in Philadelphia under the standard.

On March 12, 2008 (73 FR 16436), EPA significantly strengthened the 8-hour ozone NAAQS by revising the primary 8-hour ozone standard to a level of 0.075 ppm. On March 6, 2015 (80 FR 12264), EPA published a final rule for the implementation of the 2008 8-hour ozone NAAQS, while at the same time revoking the 1997 8-hour ozone NAAQS, effective on April 6, 2015.[4] Consistent with EPA's previous approach, the 2008 8-Hour Ozone Implementation Rule established anti-backsliding principles to transition from implementing the revoked 1997 8-hour ozone NAAQS to the 2008 8-hour ozone NAAQS, as codified in 40 CFR 51.1100. In this rule, EPA clarified that RACT under the 1997 8-hour ozone NAAQS, among other requirements, continues to apply to a nonattainment area, in accordance with its designation and classification for the 1997 8-hour ozone NAAQS at the time of the revocation of the standard. Therefore, 1997 8-hour ozone RACT continues to be an applicable requirement for Philadelphia.

The implementation of RACT controls under the 1997 8-hour ozone NAAQS is required in Philadelphia for each category of VOC sources covered by a CTG document issued by EPA (*i.e.,* CTG RACT) and all other major stationary sources of NO_X and VOC (major source RACT or non-CTG RACT), as defined for a moderate nonattainment area. Philadelphia was also subject to the CAA RACT requirements under the 1-hour ozone NAAQS, as it was designated as part of the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD severe ozone nonattainment area under the 1-hour ozone NAAQS. *See* 56 FR 56694, 56822 (November 6, 1991). As a result, PADEP and AMS implemented numerous RACT controls in Philadelphia to meet the statutory RACT requirements under this previous standard.

B. EPA's Requirements Under the 1997 8-Hour Ozone RACT

On November 29, 2005, EPA published the second phase to its implementation rule to address nonattainment SIP requirements for the 1997 8-hour ozone NAAQS (the Phase 2

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[1] *See* 44 FR 53782 (September 17, 1979); EPA's 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management to Regional Administrators, "Guidance for Determining Acceptability of SIP Regulations in Non-attainment Areas" (December 9, 1976); and also, 72 FR 20586, 20610 (April 25, 2007).

[2] A major source in an ozone nonattainment area is defined as any stationary source that emits or has the potential to emit NO_X and VOC emissions above a certain applicability threshold that is based on the classification of the ozone nonattainment area. *See* "major stationary source" in 40 CFR 51.165.

[3] "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1," 69 FR 23951 (April 30, 2001).

[4] "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" Final Rule, 80 FR 12264 (March 6, 2015).

Ozone Implementation Rule).[5] This rule addressed, among other things, control and planning obligations as they apply to nonattainment areas under the 1997 8-hour ozone NAAQS, including RACT and RACM. In this rule, EPA specifically required that states meet the RACT requirements under the 1997 8-hour ozone NAAQS, either through a certification that previously adopted RACT controls in their SIP revisions approved by EPA under the 1-hour ozone NAAQS continue to represent adequate RACT control levels for 1997 8-hour ozone NAAQS attainment purposes, or through the adoption of new or more stringent regulations that represent RACT control levels.[6] A certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data. Adoption of new RACT regulations should occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level. EPA also requires states to submit a negative declaration if there are no CTG major sources of VOC and NO_X emissions within the nonattainment area in lieu of or in addition to a certification.

EPA particularly addressed controls for NO_X emissions from electric generating units (EGUs) in the Phase 2 Ozone Implementation Rule. EPA determined that the regional NO_X emissions reductions that result from either the NO_X SIP Call or the Clean Air Interstate Rule (CAIR) for addressing interstate transport of ozone pollution, would meet the NO_X RACT requirement for EGUs located in states included within the respective geographic regions. Thus, EPA concluded that the states did not need to perform a NO_X RACT analysis for sources subject to the state's emission cap-and-trade program where such program has been adopted by the state and approved by EPA as meeting the NO_X SIP Call requirements or, in states achieving the CAIR reductions solely from EGUs, the CAIR NO_X requirements.

In November 2008, several parties challenged the Phase 2 Ozone Implementation Rule, particularly, EPA's determination that compliance by EGUs with the requirements of the NO_X SIP and/or CAIR could also be construed as compliance with RACT under the 1997 8-hour ozone NAAQS. As a result of this litigation, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) decided that such presumptions and determinations by EPA in the Phase 2 Ozone Implementation Rule were inconsistent with the statutory requirements of section 172(c)(1) of the CAA. Because region-wide RACT-level emissions reductions do not meet the statutory requirement that the reductions be from sources in the nonattainment area, the D.C. Circuit found that EPA had not shown that compliance with NO_X SIP Call would result in at least RACT-level reductions in emissions from sources within each nonattainment area. *See NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009).[7]

C. EPA's Conditional Approval for Philadelphia's 1997 8-Hour Ozone RACT Demonstration

On September 29, 2006, PADEP submitted, on behalf of AMS, a SIP revision purporting to address the RACT requirements for Philadelphia under the 1997 8-hour ozone NAAQS. The 2006 SIP revision consisted of a RACT demonstration for Philadelphia, including (1) a certification that previously adopted RACT regulations that were approved by EPA in Pennsylvania's SIP for Philadelphia under the 1-hour ozone NAAQS continue to represent RACT for the 1997 8-hour ozone NAAQS implementation purposes; (2) the adoption of federally enforceable permits that represent CTG RACT control for four major VOC sources; and (3) a negative declaration that certain VOC source categories that would be covered by CTG documents do not exist in Philadelphia.

EPA identified two deficiencies in the 2006 SIP revision which precluded EPA's approval. First, the 2006 SIP revision included as RACT certain provisions that relied on the NO_X SIP Call, which in light of the 2009 D.C. Circuit decision in *NRDC* v. *EPA* regarding the inappropriateness of the NO_X SIP Call as RACT, precluded EPA from approving the 2006 SIP revision. Specifically, the 2006 SIP submittal certified as RACT the following PADEP regulations: 25 Pa Code sections 145.1–145.100 ("NO_X Budget Trading Program"), 25 Pa Code sections 145.111–145.113 ("Emissions of NO_X from Stationary Internal Combustion Engines"), and 25 Pa Code sections 145.141–144 ("Emissions of NO_X from Cement Manufacturing"). Second, EPA also determined that the Philadelphia 2006 SIP revision did not sufficiently address the source-specific RACT requirements for 46 major sources of NO_X and/or VOC that were previously approved under the 1-hour ozone NAAQS, per the SIP approved regulation in 25 Pa Code sections 129.91–92, which AMS certified as RACT under the 1997 8-hour ozone NAAQS.

On June 22, 2010, PADEP submitted another RACT SIP revision addressing certain CTG RACT requirements that superseded portions of the RACT demonstration in the 2006 SIP revision. The 2010 SIP revision consisted of two new CTG regulations, Air Management Regulation (AMR) V section XV ("Control of Volatile Organic Compounds (VOC) from Marine Vessel Coating Operations") and AMR V section XVI ("Synthetic Organic Manufacturing Industry (SOCMI) Air Oxidation, Distillation, and Reactor Processes"), and related amendments to AMR V Section I ("Definitions"), as adopted by AMS on April 26, 2010, effective upon adoption. The 2010 SIP revision also included a negative declaration demonstrating that there are no sources in Philadelphia for the CTG source category of natural gas and gasoline processing plants. The CTG regulations adopted in 2010 superseded source-specific RACT determinations provided in the 2006 SIP revision, because the new provisions are as, if not more, stringent than those RACT requirements previously submitted in 2006.[8] Additionally, the 2010 SIP revision clarified that in the 2006 SIP submission, AMS had erroneously defined two sources in Philadelphia under the CTG category for natural gas and gasoline processing plants, and for which AMS submitted source-specific RACT determinations in the 2006 SIP revision. For these reasons, EPA determined that the provisions in the 2006 and 2010 SIP revisions were related in addressing Philadelphia's 1997 8-hour ozone NAAQS RACT obligation and were not separable for approval purposes as each SIP submittal contained provisions addressing RACT obligations.

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[5] "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2," 70 FR 71612–71705 (November 29, 2005).

[6] For more information, see the preamble of the final Phase 2 Ozone Implementation Rule for a discussion of EPA's interpretation of the CAA RACT requirements for the 1997 8-hour ozone NAAQS, in 70 FR 71652–71659 (November 29, 2005).

[7] The D.C. Circuit addressed whether reductions from the NO_X SIP call could address NO_X RACT. The issue as to whether CAIR satisfies NO_X RACT for EGUs was not addressed by the D.C. Circuit because the D.C. Circuit had already remanded CAIR to EPA for further analysis at that time. *See North Carolina* v. *EPA,* 531 F.3d 896; modified by 550 F.3d 1176 (D.C. Cir. 2008). In subsequent litigation, the rule that EPA promulgated to replace CAIR (*i.e.,* the Cross State Air Pollution Rule or CSAPR) was initially vacated by the D.C. Circuit but upheld by the U.S. Supreme Court. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). EPA began implementing CSAPR in January 2015. *See* 79 FR 71663 (December 3, 2014) (interim final rulemaking issued after D.C. Circuit lifted stay on CSAPR). Thus, EPA decided it would be appropriate to reconsider its prior determination that CAIR could satisfy NO_X RACT in light of the earlier decision in *NRDC* v. *EPA. See* 79 FR 32892 (June 9, 2014) (proposing removal of prior determination that CAIR could be NO_X RACT).

[8] AMR V section XV and AMR V section XVI address EPA's RACT requirements as specified in the following CTGs: (1) "Control Techniques Guidelines for Shipbuilding and Ship Repair Operations (Surface Coating)" (61 FR 44050, August 27, 1996), (2) "Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing

Pursuant to section 110(k)(4) of the CAA, on April 26, 2013, PADEP submitted, on behalf of AMS, a letter in which AMS committed to submit SIP revisions addressing the source-specific RACT requirements for major sources of NO$_X$ and/or VOC in Philadelphia under the 1997 8-hour ozone NAAQS, including EGUs that were presumed to rely on the NO$_X$ SIP Call provisions to meet RACT. In the April 26, 2013 letter, AMS identified five sources that since the approval of the 1-hour ozone source-specific RACT determinations have adopted or will adopt additional controls that it believed represent RACT under the 1997 8-hour ozone NAAQS, and for which it would submit new source-specific RACT determinations: (1) Philadelphia Energy Solutions Refining and Marketing, LLC (formerly Sunoco Inc. (R&M)—Philadelphia), (2) Kraft Nabisco (formerly Nabisco Biscuit Co, and presently Mondelez), (3) Temple University—Health Sciences Campus, (4) GATX Terminals Corporation (presently, Kinder Morgan Liquids terminals, LLC), and (5) Honeywell International—Frankford Plant (formerly Sunoco Chemicals—Frankford Plant). Additionally, AMS indicated it would submit source-specific RACT determinations for five EGU sources in Philadelphia that relied on emissions reductions under the NO$_X$ SIP Call as RACT including: (1) Exelon Generating Company—Delaware Station, (2) Exelon Generating Company—Richmond Station, (3) Exelon Generating Company—Schuylkill Station, (4) Veolia Energy—Edison Station (formerly TRIGEN—Edison Station), and (5) Veolia Energy—Schuylkill Station (formerly TRIGEN-Schuylkill Station). AMS needed to submit source-specific RACT determinations or alternative certifications to address RACT for any major NO$_X$ sources, such as EGUs, for which AMS relied in prior SIP submissions on the NO$_X$ SIP Call to address RACT for the 1997 8-hour ozone NAAQS, because EPA cannot approve as RACT provisions relying on the NO$_X$ SIP Call. *See NRDC* v. *EPA*, 571 F.3d 1245.

On June 19, 2013 (78 FR 36716), EPA proposed conditional approval of the Philadelphia 1997 8-hour ozone RACT demonstration included in both the 2006 and 2010 RACT SIP revisions, based upon AMS's commitment to submit additional SIP revisions to correct the deficiencies previously identified by EPA.[9] In the June 19, 2013 proposed conditional approval, EPA proposed that in order to correct the deficiencies in the Philadelphia 1997 8-hour ozone RACT demonstration, AMS needed to provide a source-specific RACT analysis for each major NO$_X$/VOC source subject to 25 Pa Code 129.91–92 for which current controls do not currently and adequately represent RACT for the 1997 8-hour ozone NAAQS, including each of the 10 major NO$_X$ and/or VOC sources identified by AMS in the April 26, 2013 letter, or alternatively provide a certification that source-specific RACT controls for all other major sources of NO$_X$ and VOC in Philadelphia previously approved by EPA in Pennsylvania's SIP for the 1-hour ozone NAAQS continue to adequately represent RACT for the 1997 8-hour ozone NAAQS.

On December 13, 2013 (78 FR 75902), EPA finalized its conditional approval of the Philadelphia 1997 8-hour ozone RACT demonstration, as provided in the 2006 and 2010 SIP revisions, with the condition that Pennsylvania, on behalf of AMS, submits additional SIP revisions addressing source-specific RACT to address the deficiencies in the previously submitted 1997 8-hour ozone RACT demonstration. As stated in the December 13, 2013 final action, once EPA determines that AMS has satisfied this condition, EPA shall remove the conditional nature of such approval and the Philadelphia 1997 8-hour ozone RACT demonstration will receive at that time full approval status. For a detailed discussion of EPA's conditional approval of Philadelphia's 1997 8-hour ozone RACT demonstration and the identified deficiencies of the 2006 SIP revision, see 78 FR 75902 (December 13, 2013) (final action) and 78 FR 36716 (June 19, 2013) (proposed action).

II. Summary of SIP Revisions

To satisfy the requirements from EPA's December 13, 2013 conditional approval, PADEP has submitted to EPA, on behalf of AMS, subsequent SIP revisions addressing the source-specific RACT requirements for major sources in Philadelphia subject to 25 Pa Code 129.91–92. On June 27, 2014, February 18, 2015, and April 26, 2016, PADEP submitted to EPA, on behalf of AMS, three separate SIP revisions pertaining to the Philadelphia 1997 8-hour ozone RACT demonstration (hereafter collectively referred to as "the Philadelphia RACT SIP revisions"). AMS provided documentation in the Philadelphia RACT SIP revisions to support that RACT has been met for all major sources of NO$_X$ and/or VOC in Philadelphia, including source-specific RACT determinations for affected emission units at each major source subject to 25 Pa Code 129.91–92.[10] Specifically, AMS evaluated a total of 25 major NO$_X$ and/or VOC sources in Philadelphia for RACT.

On April 26, 2016, PADEP also submitted a letter, on behalf of AMS, withdrawing from the 2006 SIP revision the certification of the Pennsylvania rules related to the NO$_X$ SIP Call as 1997 8-hour ozone RACT, specifically 25 Pa Code sections 145.1–145.100, 25 Pa Code sections 145.111–145.113, and 25 Pa Code sections 145.141–144. In the letter, PADEP reaffirms that AMS is no longer relying on the SIP approved provisions related to the NO$_X$ SIP Call as 1997 8-hour ozone RACT for any sources in Philadelphia. On May 4, 2016, EPA submitted a letter accepting PADEP's request for withdrawal of these provisions from the 2006 SIP revision, and acknowledging that this portion of the submittal is no longer pending before EPA for a final action.

The June 27, 2014 SIP revision consists of a source-specific RACT determination for certain emissions units (6 process heaters) at Philadelphia Energy Solutions Refining and Marketing, LLC (PES). The February 19, 2015 SIP revision addresses RACT requirements for the 25 major sources of NO$_X$ and/or VOC in Philadelphia, including the remaining emissions units at PES that were not addressed in the June 27, 2014 SIP revision. The April 26, 2016 SIP revision amends the RACT determinations for 15 sources that were

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Industry" (EPA–450/3–84–015, December 1984), and (3) "Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry" (EPA–450/4–91–031, August 1993).

[9] In this action, EPA also withdrew its previous proposed rule published on August 26, 2008 (73 FR 50270), proposing to fully approve the 2006 SIP revision addressing 1997 8-hour ozone RACT for Philadelphia.

[10] The applicable "major source" thresholds for 1997 8-hour ozone RACT purposes are 50 tons per year (TPY) of VOC and 100 TPY of NO$_X$ or greater of potential emissions for each respective pollutant, in light of the moderate ozone classification of Philadelphia for the 1997 8-hour ozone NAAQS, as well as its location in the OTR.

previously addressed in the February 19, 2015 SIP revision.

In the Philadelphia RACT SIP revisions, AMS includes a RACT evaluation for each major source of NO_X and/or VOC in Philadelphia. AMS identifies applicable RACT requirements for the existing emissions units at each major source located in Philadelphia, including CTG RACT, presumptive RACT requirements, and source-specific RACT requirements.[11] AMS identified 16 major sources of NO_X and/or VOC in Philadelphia subject to Pennsylvania's source-specific RACT requirements, as summarized in Table 1, including 14 major sources subject to previous source-specific RACT determinations and 2 major sources newly subject to source-specific RACT.

TABLE 1—MAJOR NO_X AND/OR VOC SOURCES IN PHILADELPHIA SUBJECT TO SOURCE-SPECIFIC RACT UNDER THE 1997 8-HOUR OZONE NAAQS

Major source	Plant ID No.	1-Hr ozone RACT source?	Major source pollutant	New or revised source-specific determination? ("Yes" or "No")	New or revised RACT permit (effective date)
Exelon Generating Company—Delaware Station.	04901	X	NO_X	No.	
Exelon Generating Company—Richmond Station.	04903	X	NO_X	Yes	PA–51–4903 (02/09/16).
Exelon Generating Company—Schuylkill Station.	04904	X	NO_X	No.	
Honeywell—Frankford Plant [formerly, Sunoco Chemical—Frankford Plant].	01551	X	NO_X and VOC	Yes	PA–51–1151 (02/09/16).
Kinder Morgan Liquids Terminals, LLC [formerly, GATX Terminals Corp.].	05003	X	VOC	Yes	PA–51–5003 (02/09/16).
Naval Surface Warfare Center, Carderock Division (NSWCCD).	09724	X	NO_X	Yes	PA–51–9724 (02/09/16).
Newman & Company, Inc.	03489	X	NO_X	No.	
PaperWorks Industries Inc. [formerly, Jefferson Smurfit, Corp./Container Corp. of America].	01566	X	NO_X	Yes	PA–51–1566 (01/09/15).
Philadelphia Energy Solutions—Refining and Marketing, LLC [formerly, Sunoco Inc. (R&M)—Philadelphia].	01501/01517	X	NO_X and VOC	Yes	PA–51–01501 and PA–51–01517 (02/09/16).
Philadelphia Gas Works—Richmond Plant	04922	X	NO_X	Yes	PA–51–4922 (01/09/15).
Philadelphia Prison System	09519		NO_X	Yes	PA–51–9519 (02/09/16).
Plain Products Terminals, LLC [formerly, Maritank Philadelphia, Inc. and Exxon Company, USA].	05013	X	VOC	Yes	PA–51–05013 (02/09/16).
Temple—Health Sciences Campus	08906	X	NO_X	Yes	PA–51–8906 (01/09/15).
Temple—Main Campus	08905		NO_X	Yes	PA–51–8905 (01/09/15).
Veolia Energy—Edison Station [formerly TRIGEN- Edison Station].	04902	X	NO_X	Yes	PA–51–4902 (01/09/15).
Veolia Energy—Schuylkill Station [TRIGEN—Schuylkill Station]/Grays Ferry Cogeneration Partnership/Veolia Energy Efficiency, LLC[a].	04942/04944/10459	X	NO_X	Yes	PA–51–4942 (02/09/16)/PA–51–4944 (01/09/15)/PA–51–10459 (01/09/15).

[a] Grays Ferry Cogeneration Plant, Veolia Schuylkill, and Veolia Energy Efficiency have been aggregated as a single major source after the 1-hour RACT determination. AMS submitted RACT documentation for each facility separately, although considering RACT applicability as a single major source of NO_X.

The source-specific RACT determinations submitted by AMS consist of an evaluation of all reasonably available controls at this time for each affected emissions unit, resulting in an AMS determination of what specific control requirements, if any, satisfy RACT for that particular unit. The adoption of new or additional controls or the revisions to existing controls as RACT were specified as requirements in new or revised federally enforceable permits (hereafter RACT permits) issued by AMS for the source. The new or revised RACT permits have been submitted as part of the Philadelphia RACT SIP revisions for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1). For sources subject to previous RACT determinations specified in RACT permits under 40 CFR 52.2020(d)(1) for which AMS is revising or adopting additional source-specific controls, the revised RACT permits, once approved by EPA, will supersede those permits currently in the SIP. All new or revised RACT permits submitted by AMS are listed in the last column of Table 1.

As part of the source-specific RACT determinations, AMS is also certifying for certain emissions units at major sources subject to source-specific RACT determinations under the 1-hour ozone NAAQS, which are part of the Pennsylvania SIP at 40 CFR

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[11] The CTG RACT requirements are those specified in regulations in the Pennsylvania SIP and are consistent with EPA's CTGs for the affected source categories. Presumptive RACT requirements are those specified in 25 Pa Code section 129.93, which are alternative compliance option for sources subject to source-specific RACT.

52.2020(d)(1), that the existing RACT controls continue to represent RACT for the 1997 8-hour ozone NAAQS. For these units, AMS did not propose additional revisions.

AMS submitted source-specific RACT determinations for nine of the ten major sources identified in EPA's conditional approval. AMS did not submit the required source-specific RACT determination for Kraft Nabisco (formerly Nabisco Biscuit Co, and presently Mondelez), because it concluded that this source is no longer considered a major source of NO_X and VOC for 1997 8-hour ozone RACT. As clarified in the Philadelphia RACT SIP revisions, in 2012, Mondelez took federally enforceable facility-wide limits of 25 tons per year for both NO_X and VOC emissions, restricting the facility's potential emissions under the applicable thresholds for 1997 8-hour ozone RACT. EPA concurs with AMS's conclusion regarding the operational status of Mondelez and thus determines that the condition in the December 13, 2013 conditional approval to submit a source-specific RACT determination under the 1997 8-hour ozone NAAQS for this source is no longer applicable.

AMS is further certifying that there are 27 additional NO_X and/or VOC sources in Philadelphia subject to source-specific RACT determinations for the 1-hour ozone NAAQS in the Pennsylvania SIP at 40 CFR 52.2020(d)(1) that are no longer subject to RACT for purposes of the 1997 8-hour ozone NAAQS. AMS clarifies that 18 of these sources have permanently shut down, while the remaining nine are no longer considered major sources of NO_X/VOC emissions for RACT under the 1997 8-hour ozone NAAQS (less than 100 or 50 TPY, respectively). Sources that remain in operation must still comply with the SIP approved 1-hour ozone RACT determinations, although not subject to 1997 8-hour ozone RACT. AMS is formally requesting EPA to remove from the SIP the 18 source-specific RACT determinations approved under the 1-hour ozone NAAQS, as codified in 40 CFR 52.2020(d)(1). The shutdown sources and their respective SIP approved RACT Permits are listed in Table 2. AMS certifies that none of these shutdown facilities have active operating permits or air pollution licenses for any equipment, and that under Pennsylvania and Philadelphia regulations, they cannot operate until further notification and issuance of applicable permits.

TABLE 2—SHUTDOWN MAJOR SOURCES OF NO_X AND/OR VOC IN PHILADELPHIA SUBJECT TO PREVIOUS SOURCE-SPECIFIC RACT DETERMINATIONS

Source	SIP approved RACT permit (effective date)	EPA's SIP approval date
Aldan Rubber Company	PA–51–1561 (07/21/00)	10/30/01, 66 FR 54691.
Amoco Oil Company	PA–51–5011 (05/29/15)	10/31/01, 66 FR 54936.
Arbill Industries, Inc	PA–51–3811 (07/27/99)	10/30/01, 66 FR 54691.
Braceland Brothers, Inc	PA–51–3679 (07/14/00)	10/30/01, 66 FR 54691.
Budd Company	PA–51–1564 (12/28/95)	12/15/00, 65 FR 78418.
Eastman Chemical [formerly, McWhorter Technologies, Inc.]	PA–51–3542 (07/27/99)	10/30/01, 66 FR 54691.
Graphic Arts, Incorporated	PA–51–2260 (07/14/00)	10/30/01, 66 FR 54691.
Interstate Brands Corporation	PA–51–5811 (04/10/95)	12/15/00, 65 FR 78418.
Kurz Hastings, Inc.	PA–51–1585 (05/29/95)	10/31/01, 66 FR 54936.
Lawrence McFadden, Inc	PA–51–2074 (06/11/97)	10/31/01, 66 FR 54936.
O'Brien (Philadelphia) Cogeneration, Inc.—Northeast Water Pollution Control Plant	PA–51–1533 (07/21/00)	10/30/01, 66 FR 54691.
O'Brien (Philadelphia) Cogeneration, Inc.—Southwest Water Pollution Control Plant	PA–51–1534 (07/21/00)	10/30/01, 66 FR 54691.
Pearl Pressman Liberty	PA–51–7721 (07/24/00)	10/30/01, 66 FR 54691.
Philadelphia Baking Company	PA–51–3048 (04/10/95)	10/31/01, 66 FR 54936.
Rohm and Haas Company—Philadelphia	PA–51–1531 (07/27/99)	10/31/01, 66 FR 54942.
Tasty Baking Co	PA–51–2054 (04/04/95)	10/31/01, 66 FR 54942.
Transit America, Inc	PA–51–1563 (06/11/97)	11/5/01, 66 FR 55880.
SBF Communications	PA–51–2197 (07/21/00)	10/31/01, 66 FR 54942.

III. EPA's Evaluation of SIP Revisions

After thorough review and evaluation of the information provided by AMS in the Philadelphia RACT SIP revisions for major sources of NO_X and/or VOC in Philadelphia, EPA finds that the AMS source-specific RACT determinations and conclusions provided are reasonable and address RACT requirements for Philadelphia for the 1997 8-hour ozone NAAQS in accordance with the Phase 2 Ozone Implementation Rule and latest available information. EPA finds that the proposed source-specific RACT controls and emissions limits in the Philadelphia RACT SIP revisions adequately meet the CAA RACT requirements for the 1997 8-hour ozone NAAQS for each major source of NO_X and VOC in Philadelphia not covered by Pennsylvania RACT regulations.

EPA also finds that the all proposed revisions to previously SIP approved RACT requirements, as discussed in the Philadelphia RACT SIP revisions will result in equivalent or additional reductions of NO_X and/or VOC emissions and should not interfere with any applicable requirement concerning attainment or reasonable further progress with the NAAQS or interfere with other applicable CAA requirement in section 110(l) of the CAA. In the case of AMS removal of RACT requirements from the SIP that are no longer applicable, as the sources have been permanently removed, EPA finds these SIP revisions to be adequate and will not have any adverse impact to air quality. EPA's complete analysis of the Philadelphia RACT SIP revisions is included in the technical support document (TSD) available in the docket for this rulemaking action and available on line at *http://www.regulations.gov*.

As discussed earlier, EPA determined in the December 15, 2013 conditional approval that the Philadelphia 1997 8-hour ozone RACT demonstration as provided in the 2006 and 2010 SIP revisions adequately met RACT under the CAA, with exception of the source-specific RACT requirements in 25 PA Code sections 129.91–92 and the NO_X SIP Call related provisions in the Pennsylvania SIP in 25 Pa Code sections 145.1–145.100, 25 Pa Code sections 145.111–145.113, and 25 Pa Code sections 145.141–144. In this proposed rulemaking action, EPA finds that the subsequent Philadelphia RACT SIP revisions adequately correct the two deficiencies identified by EPA on the Philadelphia RACT demonstration, as provided in the 2006 and 2010 SIP revisions, and thus satisfy the December 15, 2013 conditional approval. Based on PADEP's withdrawal of the certified provisions relying on NO_X SIP Call as RACT from the 2006 SIP revision, EPA finds that the remaining certified NO_X and/or VOC regulations, the CTG negative declarations, and the recently adopted regulatory provisions in AMR V sections XV and XVI, submitted as part of the 2006 and 2010 SIP revisions, are consistent with the latest available information and EPA's guidance and therefore adequately meet RACT for the 1997 8-hour ozone NAAQS.[12]

Consequently, EPA finds that the Philadelphia 1997 8-hour ozone RACT demonstration, as provided within the SIP revisions submitted to EPA from 2006 to 2016, address RACT under the 1997 8-hour ozone NAAQS for all NO_X and/or VOC major sources in Philadelphia through: (1) Compliance with previously approved RACT regulations in the Pennsylvania SIP, including but not limited to CTG regulations (in the 2006 and 2010 SIP revisions); (2) submission of negative declarations (in the 2006 and 2010 SIP revisions) for CTG source categories; (3) the adoption of additional source-specific controls and/or limits in major sources, included in federally enforceable permits and submitted as part of the SIP revisions; and/or (4) certifications for major sources subject to source-specific RACT controls previously approved into the SIP, which controls continue to represent RACT under the 1997 8-hour ozone NAAQS. Additional details regarding Philadelphia's source-specific RACT determinations, full background on the Philadelphia RACT SIP revisions, and EPA's detailed evaluation of the Philadelphia RACT SIP revisions can be found in the TSD prepared for this rulemaking action and available in the docket for this rulemaking at *http://www.regulations.gov.*

IV. Proposed Action

EPA proposes to approve the Philadelphia RACT SIP revisions submitted on June 27, 2014, February 18, 2015, and April 26, 2016 for all major sources of NO_X and/or VOC in Philadelphia subject to 25 Pa Code 129.91–92, as adequately meeting the CAA RACT requirements for the 1997 8-hour ozone NAAQS. EPA is proposing to incorporate by reference in the Pennsylvania SIP, via RACT permits, source-specific RACT determinations under the 1997 8-hour ozone NAAQS for certain major sources of NO_X and VOC emissions.

EPA also proposes to find that the Philadelphia RACT SIP revisions satisfy the conditions established by EPA in its December 13, 2013 conditional approval to correct the deficiencies of the previously submitted Philadelphia 1997 8-hour ozone NAAQS RACT demonstration. For this reason, EPA also proposes to remove the conditional nature of the December 13, 2013 conditional approval and grant full approval to the Philadelphia 1997 8-hour ozone NAAQS RACT demonstration, as submitted on September 29, 2006 and June 22, 2010 as SIP revisions.

EPA also proposes in this rulemaking action that the certified and recently adopted NO_X and VOC regulations and the negative declarations, included in the September 29, 2006 and June 22, 2010 SIP revisions, meet RACT under the 1997 8-hour ozone NAAQS. Therefore, EPA also proposes to incorporate by reference into the Pennsylvania SIP the regulatory provisions in AMR V sections I, XV, and XVI, as amended or adopted in April 26, 2010 and effective upon adoption. Finally, EPA proposes that the Philadelphia 1997 8-hour ozone NAAQS RACT demonstration, included within the September 29, 2006, June 22, 2010, June 27, 2014, February 18, 2015, and April 26, 2016 SIP revisions, satisfies the RACT requirements under the CAA for the 1997 8-hour ozone NAAQS, in accordance with the Phase 2 Ozone Implementation Rule. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Incorporation by Reference

In this proposed rulemaking action, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference source-specific RACT determinations under the 1997 8-hour ozone NAAQS for certain major sources of NO_X and VOC emissions, and Philadelphia CTG RACT regulations of AMR V sections I, XV, and XVI, as amended or adopted in April 26, 2010 and effective upon adoption. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or may be viewed at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information). In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the regulatory provisions under 40 CFR 52.2020(c) and the source-specific RACT requirements under 40 CFR 52.2020(d)(1).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human

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[12] EPA's evaluation of the 2006 and 2010 SIP revisions is provided in the June 19, 2013 proposed conditional approval and related technical support document dated May 22, 2013, and will not be restated here. *See* 78 FR 36716.

health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, regarding the Philadelphia RACT requirements under the 1997 8-hour ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 3, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2016–14102 Filed 6–14–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2015–0238, FRL–9947–68–Region 1]

Air Plan Approval; CT; NO_X Emission Trading Orders as Single Source SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision continues to allow facilities to create and/or use emission credits using NO_X Emission Trading and Agreement Orders (TAOs) to comply with the NO_X emission limits required by Regulations of Connecticut State Agencies (RCSA) section 22a–174–22 (Control of Nitrogen Oxides). The intended effect of this action is to propose approval of the individual trading orders to allow facilities to determine the most cost-effective way to comply with the state regulation. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before July 15, 2016.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2015–0238 at *http://www.regulations.gov,* or via email to *Dahl.Donald@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, (OEP05–2), Boston, MA 02109–3912, phone number (617) 918–1657, fax number (617) 918–0657, email *Dahl.Donald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

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I. Background and Purpose.
II. Analysis of State Submission
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I. Background and Purpose

On November 15, 2011, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted a formal revision to its State Implementation Plan (SIP). This SIP revision consists of eighty-nine source-specific Trading Agreement and Orders (TAOs) that allow twenty-four individual stationary sources of nitrogen oxide (NO_X) emissions to create and/or trade NO_X emission credits in order to ensure more effective compliance with EPA SIP-approved state regulations for reducing NO_X emissions. We previously approved source-specific TAOs of the same kind issued by CT DEEP under this program for these same sources on September 28, 1999 (64 FR 52233), March 23, 2001 (66 FR 16135), and September 9, 2013 (78 FR 54962). The SIP submittal also includes Consent Order 8029A issued to Hamilton Sundstrand which addresses Volatile Organic Compound (VOC) emissions.

In our September 9, 2013 approval, EPA acted on most of the TAOs contained in CT DEEP's July 1, 2004 SIP revision submission to EPA. At that time, EPA did not act on (1) TAO 8021 issued to Pfizer; (2) TAO 8246 issued to Sikorsky Aircraft; (3) TAO 8110A issued to Yale University; and (4) Consent Order 7019A issued to Hamilton Sundstrand Corporation. On May 29, 2015, CT DEEP revised its July 1, 2004 SIP revision submittal to EPA by modifying TAO 8110A. Today we are acting on the modified version of TAO 8110A. EPA will take action on TAOs 8246 and 8021 at a future date. Lastly, on April 22, 2014 the CT DEEP withdrew Consent Order 7019A from the 2004 SIP submittal.

The CAA requires states to develop Reasonably Available Control Technology (RACT) regulations for all major stationary sources of NO_X in areas which have been classified as "moderate," "serious," "severe," and "extreme" as well as in all areas of the Ozone Transport Region (OTR). EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762; September 17, 1979). This requirement is established by sections 182(b)(2), 182(f), and 184(b) of the CAA.

Connecticut, as part of the OTR as well as being designated nonattainment for ozone, established NO_X emission limits for existing major sources in order to meet the RACT requirement. The NO_X emission limits are codified in Regulations of Connecticut State Agencies (RCSA) section 22a–174–22 (Control of Nitrogen Oxides). These state regulations were last approved by EPA into the Connecticut SIP on October 6, 1997. (See 62 FR 52016).

As stated above, when determining what constitutes RACT for a source, a state and EPA need to consider both technology and economic feasibility. For example, it is technically possible for a source to install pollution control devices in series to further reduce emissions. However, if a state and EPA determined that such an installation would be economically infeasible in relation to the additional emissions reductions achieved, then the RACT emission limit under Connecticut's regulations could legitimately be established at a higher rate than would be achieved by installing control devices in series.

RCSA 22a–174–22 establishes NO_X emission limits for several types of fossil-fuel firing emission units. RCSA 22a–174–38 establishes NO_X emission limits for municipal waste combustors. Since RACT is determined on a source-by-source basis, a fossil-fuel firing source may under Connecticut's regulations request a higher emission limit by making a demonstration to the CT DEEP that it is either technologically or economically infeasible, or both, to meet the NO_X RACT limit in RCSA 22a–174–22. CT DEEP's use of the NO_X TAOs has rendered the need for higher source-specific emission rates, based on demonstrations of technological and/or economic feasibility, less frequent, thus having the effect of reducing overall NO_X emissions to a greater degree than would be the case without the TAO trading mechanism. For example, in its RACT Analysis for the 2008 ozone national ambient air quality standard (NAAQS) submitted to EPA on July 18, 2014 (2014 RACT Analysis), CT DEEP stated that "[t]he traditional cost effectiveness ($/ton of NO_X emitted) evaluation of controlling NO_X emissions from the load-following boilers and uncontrolled turbines will not address high electric demand day (HEDD) emissions because the addition of controls on existing units that operate infrequently will nearly always result in a cost of control that is not reasonable."

Accordingly, as an alternative to these potential single source SIP determinations, which can lead to higher levels of NO_X emissions, Connecticut established an emission trading program in RCSA 22a–174–22(j) for fossil-fuel firing emission units and RSCA 22a–174–38(d) for municipal waste combustors. These two SIP-approved regulations allow a source to participate in Connecticut's NO_X emission trading program using two different mechanisms. RSCA 22a–174–22(j) requires a source that wants to participate in the program to enter into a TAO with the CT DEEP. RSCA 22a–174–38(d) does not require a municipal waste combustor (MWC) to enter into a TAO and instead contains specific requirements that an MWC must meet in order to create a NO_X emission reduction credit that can be used in Connecticut's trading program. These emission trading programs provide incentives for some facilities subject to the NO_X emission limits in either RSCA 22a–174–22 or RSCA 22a–174–38 to reduce their NO_X emissions beyond what is required to meet RACT by allowing them to create discrete emission reduction credits (DERCs).[1] The DERCs may then be purchased by other sources which otherwise may have needed a higher source-specific NO_X emission limit due to technological and/or economic infeasibility. DERCs are created when a facility installs and operates a control device which reduces emissions beyond what is required to meet the NO_X emission limitations in RSCA 22a–174–22 or in RSCA 22a–174–38(d). Once a DERC is created, it can then be sold to another source that is unable to meet the NO_X limit in RSCA 22a–174–22 .[2] The incentive to over control leads to a greater NO_X emission reduction than the reduction that would have occurred if Connecticut had to establish a higher NO_X emission limit for those sources which demonstrated that they would be unable to meet the NO_X limits in RSCA 22a–174–22 due to cost or technological infeasibility, or both.

At the time Connecticut instituted the NO_X emission trading program in 1995, the sources generating NO_X emission credits in Connecticut were reducing their emissions to levels below those required by Connecticut's RACT regulations. Since that time, in more recent years, other states have established NO_X RACT emission limits for emission units similar to those in Connecticut, at levels lower than the emission limits in RSCA 22a–174–22 which are currently approved in the Connecticut SIP as meeting RACT for the 1997 ozone standard. CT DEEP is now required by the CAA to recertify that its regulations meet RACT for the 2008 ozone standard. During this recertification process, CT DEEP recognized the fact the NO_X emission limits contained in RSCA 22a–174–22 may not be stringent enough for the 2008 ozone standard by stating in its 2014 RACT Analysis that "[w]hile the combination of emissions limits and trading initially led (sic) to significant system-wide emission reductions throughout Connecticut in 1995, the efforts to "over-control" to generate credits are now merely RACT in many other states. DEEP must therefore consider elimination of the single source emissions trading program, as well as more stringent emission limits, to meet current RACT levels and realize additional reductions in Connecticut emissions." In other words, CT DEEP's NO_X emission trading program, as presently structured in RSCA 22a–174–22, may no longer be viable in the future to meet today's standards for RACT, as emission limits in RSCA 22a–174–22 may need to be revised in order for CT DEEP to demonstrate attainment with the 2008 ozone standard. In fact, CT DEEP's July 1, 2014 RACT submittal states, "DEEP commits to perform further evaluation of Connecticut's municipal waste combustor and fuel-burning source NO_X requirements and to seek any regulatory revisions necessary to revise the control requirements to a RACT level for the 2008 ozone NAAQS," and also states, "DEEP commits to begin a review of NO_X emissions and emissions controls for the sources now subject to RCSA section 22a–174–22 with the goal of developing changes to RCSA section 22a–174–22 sufficient to satisfy RACT under the 2008 ozone NAAQS."[3] Therefore, EPA is not deciding if the NO_X trading program allowed by RSCA 22a–174–22 is sufficient to meet RACT for the 2008 ozone standard and is not taking any action on Connecticut's July 1, 2014 RACT SIP revision in this action. Rather, EPA will address those issues in a future rulemaking.

Banked emission reduction credits must be correctly accounted for in attainment plans in order to prevent unplanned future emissions. On February 1, 2008, Connecticut submitted its 2002 to 2008 reasonable further progress (RFP) plan and 2002 base year inventory to EPA as part of its attainment demonstration SIP submittal for the 1997 8-hr ozone standard. On October 14, 2009, Connecticut submitted a revision to the RFP plan. EPA approved Connecticut's RFP plan, as revised, on August 22, 2012 (77 FR 50595). In the October 14, 2009 revision, Connecticut explained that any DERCs that existed in the base year 2002 will have expired by the end of the RFP period in 2008. This is based on the fact that under Connecticut's NO_X emission trading program, DERCs expire within five years of creation. Since any DERCs existing in 2002 would not be available for use in 2008, banked DERCs need not be accounted for in a state's RFP analysis, and Connecticut has properly done that. Therefore, EPA is concluding the TAO's that we are proposing to approve into the SIP today have been properly accounted for in Connecticut's attainment plan.

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[1] The NO_X emission credits created pursuant to RSCA 22a–174–38(d) are referred to as emission reduction credits.

[2] RSCA 22a–174–38(d)(1) also allows a municipal waste combustor that commenced construction prior to December 20, 1989 to use emission credits created under RSCA 22a–174–38 to comply with the NO_X emission limits contained in RSCA 22a–174–38(c)(8).

[3] Furthermore, CT DEEP is currently working with a RACT stakeholder workgroup on draft regulations. See *www.ct.gov/deep/cwp/view.asp?a=2684&q=546804&deepNav_GID=1619.*

With respect to the 2008 ozone standard, both Connecticut nonattainment areas were initially designated "marginal" nonattainment for this standard on May 21, 2012. (See 77 FR 30088). However, on May 4, 2016, EPA re-classified or "bumped-up" these areas to moderate nonattainment. (See 81 FR 26697). Connecticut will need to account for DERCs in its new RFP and attainment plans for this standard which must be submitted as expeditiously as practicable, but no later than January 1, 2017.

II. Analysis of State Submission

EPA issued a guidance document "Improving Air Quality with Economic Incentive Programs" (EIP Guidance).[4] This guidance applies to discretionary economic incentive programs (EIPs). EPA's final action on these discretionary economic incentive programs occurs when EPA acts on a state's request to revise the SIP. EPA reviewed the source-specific TAOs with respect to the expectations of the EIP Guidance. EPA has concluded, after review and analysis of the source-specific TAOs, that they are consistent with the EIP Guidance. See the Technical Support Document in the docket for this action for EPA's analysis of why the TAO's are consistent with the EIP.

When EPA designated areas for the 2008 ozone standard, Connecticut was divided into two separate areas, the Greater Connecticut Area and the New York-N. New Jersey-Long Island NY-NJ-CT area. CT DEEP and EPA analyzed emission trading data for the period of time the TAOs were in effect to determine if more emission reduction credits were being used for compliance than were generated or created in any of Connecticut's two nonattainment areas. EPA has determined the TAOs have resulted in RACT equivalent emission reductions in each of the two nonattainment areas. See the Technical Support Document in the docket for this action for an explicit accounting of the emissions from each facility in each nonattainment area.

The TAOs being approved into Connecticut's SIP today are limited to facilities which have already been authorized in the past by the State to operate under a TAO and those TAOs continue to authorize the sources until May 31, 2014 to create and/or use NO_X emission credits and allow for unused NO_X allowances to be converted into NO_X emission credits. The TAOs previously issued by Connecticut to these facilities were approved by EPA into the Connecticut SIP on September 28, 1999 (64 FR 52233), March 23, 2001 (66 FR 16135), and September 9, 2013 (78 FR 54962). The reason the TAOs must be approved at this time for these same facilities is that the TAOs previously approved had all expired by May 1, 2007.

III. Proposed Action

EPA is proposing to approve Connecticut's submitted SIP revision for the NO_X TAOs submitted on November 15, 2011. EPA is not taking action on Consent Order 8029A issued to Hamilton Sundstrand Corporation. EPA will take action on this Consent Order at a later date. EPA is also proposing to approve TAO 8110A, submitted on July 1, 2004 and amended on May 29, 2015. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: May 31, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2016–14100 Filed 6–14–16; 8:45 am]

BILLING CODE 6560–50–P

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[4] See EPA–452/R–01–001, January 2001 at *https://www3.epa.gov/ttn/caaa/t1/memoranda/eipfin.pdf.*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0675; FRL–9947–61–Region 4]

Air Plan Approval; Kentucky; Source Specific Revision for Louisville Gas and Electric

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky through its Energy and Environment Cabinet, Department of Environmental Protection, Division for Air Quality (KY DAQ) on February 13, 2013, for the purpose of establishing emission requirements for the changeover from coal-fired units U4, U5 and U6 to a new natural gas-fired combined cycle (NGCC) generating unit U15 and auxiliary boiler U16 at the Louisville Gas and Electric Company, Cane Run Generating Station (LG & E Cane Run Facility).

DATES: Comments must be received on or before July 15, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0675 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jane Spann of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Spann may be reached by telephone at (404) 562–9029 or via electronic mail at *spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Ozone is created when chemical reactions between volatile organic compounds (VOC) and nitrogen oxides (NO_X) occur in the presence of sunlight. Ozone is reduced by reducing VOC and NO_X emissions. The Louisville Metro Air Pollution Control District (LMAPCD) adopted regulation 6.42 *Reasonably Available Control Technology Requirements for Major Volatile Organic Compound and Nitrogen Oxides Emitting Facilities* on February 2, 1994. LMAPCD's regulation 6.42 was submitted to EPA, through the Commonwealth of Kentucky, on May 21, 1999. On October 23, 2001, EPA approved LMAPCD's regulation 6.42, section 4.4 of which requires LMAPCD to submit each source-specific reasonably available control technology (RACT) determination to EPA for approval into the Kentucky SIP. *See* 66 FR 53658. On the same date, EPA approved the NO_X RACT plan for LG & E's Cane Run Facility into the SIP. *See* 66 FR 53684.

On June 13, 2011, LG & E submitted to the Air Pollution Control Board of Jefferson County (Board) an application for a permit to construct a new NGCC generating unit U15 and auxiliary boiler U16 and retire coal-fired units U4, U5 and U6 at LG & E's Cane Run Facility to comply with other federal requirements, including the Mercury & Air Toxics Standards and the Cross-State Air Pollution Rule.[1] In response, on July 18, 2012, the Board adopted Amendment 2 establishing NO_X emission rates for the new units. On February 13, 2013, KY DAQ, on behalf of LMAPCD, submitted a SIP revision for EPA to approve the LG & E Cane Run Generating Station NO_X RACT Plan Amendment 2 into the Kentucky SIP. The LG & E Cane Run Generating Station NO_X RACT Plan Amendment 2 includes two parts: Part 1, the existing NO_X RACT Plan for the coal-fired units, which will remain in effect until those units are retired; and Part 2, the plan that will become effective upon the start of operation of the NGCC facility and the shut-down of the coal-fired units.

II. Analysis of State Submittal

CAA section 110(l) does not allow approval of a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. On May 19, 2015, LMAPCD submitted supplemental information regarding the February 13, 2013, submittal to address CAA section 110(l). The May 19, 2015, supplemental document compares the NO_X and VOC emissions from the coal-fired electric generation units (EGUs) (U4, U5 and U6) to those from the new NGCC generating unit U15 and auxiliary boiler U16. The comparison shows that substitution of NGCC units for the coal-fired EGUs will cause a reduction of 11,660 tons per year (tpy) of NO_X allowable emissions.[2] It also indicates a possible increase of 25.2 tpy of VOC allowable emissions.[3]

The Louisville area is currently in compliance with the ozone national ambient air quality standards (NAAQS). To demonstrate that the potential VOC increase of 25.2 tpy would not interfere with the area's ongoing attainment of the ozone NAAQS, LMAPCD conducted an analysis of ozone sensitivity based on data from monitors in the Louisville Metropolitan Statistical Area and a region-wide modeling project known as the "Southeastern Modeling, Analysis, and Planning" (SEMAP).[4] The analysis compared the tons per day of ozone reduced based on NO_X reductions and based on VOC reductions and determined that NO_X emission reductions in the Louisville region are 2 to 16 times more effective than VOC emission reductions at reducing ozone concentrations. Based on this analysis, LMAPCD determined that a 25-ton increase in VOC emissions can be offset with a reduction in NO_X emissions of as much as 400 tons to as little as 50 tons. Therefore, LMAPCD concluded that the potential increase in VOC of 25.2 tpy from the Cane Run facility is offset by the concurrent 11,660 tpy reduction in NO_X. EPA has preliminarily determined that the new NO_X RACT plan associated with Cane Run's change from coal-fired to natural gas-fired units meets the requirements of CAA section 110(l). Thus, EPA is proposing to approve the February 13, 2013, SIP submittal into the federally-approved SIP. This area is, as noted above, in compliance with the ozone NAAQS and there is no indication that this proposed action will cause interference with compliance with the fine particulate matter or nitrogen dioxide NAAQS.

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[1] Amendment 2 of the February 13, 2013, submittal includes a Dew Point Heater (U17). In 2014, LG&E notified LMAPCD that LG&E is not installing U17 after all.

[2] Permitted, maximum, allowable NO_X emissions for any consecutive 12 month period.

[3] Permitted, maximum, allowable VOC emissions for any consecutive 12 month period.

[4] Odam, Talat, and Zac Adelman. *Emissions and Air Quality Modeling for SEMAP.* Georgia Institute of Technology Environmental Engineering Department, the University of North Carolina Institute for the Environment and the Colorado State University Cooperative Institute for Research in the Atmosphere. October 15, 2014.

III. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the KY DAQ source-specific provision entitled "Air Pollution Control Board of Jefferson County Board Order—Amendment 2," approved by LMAPCD on July 18, 2012. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 4 office (see the **ADDRESSES** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the February 13, 2013, Kentucky SIP revision which adds LG & E Cane Run Generating Station NO_X RACT Plan Amendment 2 to the federally-approved Kentucky SIP. This SIP includes emission requirements for the changeover from coal-fired units to natural gas-fired combined cycle EGUs and associated equipment.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 1, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–14032 Filed 6–14–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5

RIN 0991–AC04

Freedom of Information Regulations

AGENCY: Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: The Department of Health and Human Services (HHS) is proposing to revise and republish its regulations implementing the Freedom of Information Act (FOIA). The regulations are being revised in order to incorporate changes made to the FOIA by the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act) and the Electronic FOIA Act of 1996 (E–FOIA Act). Additionally, the regulations are being updated to reflect changes to the organization, to make the FOIA process easier for the public to navigate, to update HHS's fee schedule, and to make provisions clearer. Because of the numerous changes to the organization and to the headings, the regulations are being republished in their entirety.

DATES: Submit comments on or before August 15, 2016.

ADDRESSES: You may submit comments via the Federal eRulemaking Portal at *www.regulations.gov*. In addition, please include the Docket ID at the top of your comments.

FOR FURTHER INFORMATION CONTACT: Michael Marquis, Michael Bell, Deborah Peters, and/or Brandon Lancey by email to: *HHS.ACFO@hhs.gov*. These individuals also can be reached by telephone at 202–690–7453.

SUPPLEMENTARY INFORMATION: This rule proposes revisions to the Department's regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. The Department's FOIA regulations were last revised on November 23, 1988. Since that time, there have been major changes to the FOIA through the passage of the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act) (Pub. L. 110–175, 121 Stat. 2524) and the Electronic Freedom of Information Act Amendments of 1996 (E–FOIA Act) (Pub. L. 104–231, 110 Stat. 3048). This revision proposes to update the regulations to make them consistent with the OPEN Government Act and the E–FOIA Act. In addition, these regulations are being updated to reflect changes to the organization, to make the FOIA process easier for the public to navigate, to update HHS's fee schedule, and to make provisions clearer.

The OPEN Government Act

The OPEN Government Act was enacted into law on December 31, 2007. Changes resulting from the enactment of the OPEN Government Act are found throughout this proposed rule. New provisions implementing the OPEN Government Act have been included in the following sections addressing the following subjects: § 5.3 (Chief FOIA Officer); § 5.3, § 5.23(c), and § 5.29(a) (FOIA Public Liaisons); § 5.3 (definition of "representative of the news media"); § 5.3, § 5.25(c), and § 5.41(f) (tolling of time limits); § 5.23(b) (receipt of requests); § 5.25(a) (tracking numbers for all requests); § 5.28(c) (indicate exemption under which redaction is made); § 5.29(b) and § 5.54(b) (references to the Office of Government Information Services (OGIS)); and § 5.44(d) (ability to charge fees when a time limit is missed).

The E–FOIA ACT

This revision proposes to update the regulations to make them consistent with the E–FOIA Act. New provisions implementing the E–FOIA Act have been included in the following sections addressing the following subjects: § 5.1(b)(3)(iv) and § 5.1(b)(3)(v) (additional category of reading room records and indexing of this category); § 5.3 and § 5.22(e) (electronic posting of reading room records); § 5.3 (definition of "record" to include material stored electronically); § 5.3 (definition of "search" to include electronic form or format); § 5.25(e) (number of days to make disclosure decision increased from 10 working days to 20); § 5.25(e) and (f) (adoption of multi-track system for processing FOIA requests); § 5.25(e), (f), (g), and (h) (FOIA requests involving "unusual circumstances"); § 5.27 (expedited processing); § 5.28(b) (informing requesters about the amount of information redacted); and § 5.28(f) (form and format of response).

Additional Changes

The proposed rule revises the FOIA regulations in order to reflect the current organizational structure of the Department. Since the regulations were last revised, the following Operating Divisions and Staff Divisions were created: The Administration for Children and Families in 1991, the Administration for Community Living in 2012, the Agency for Healthcare Research & Quality in 1989, the Program Support Center in 1995, and the Substance Abuse and Mental Health Services Administration in 1992. In addition, the Health Care Financing Administration was renamed the Centers for Medicare & Medicaid Services in 2001 and the Social Security Administration became an independent agency, leaving the organization in 1995. Sections 5.3 and 5.23 have been updated to reflect these changes.

The proposed rule establishes and defines the role of the Deputy Chief FOIA Officer at § 5.3. The proposed rule also more clearly defines the role of the HHS Freedom of Information Officer in the Office of the Secretary and details this individual's responsibility for Department-wide administration and coordination of the Freedom of Information Act at § 5.3. Finally, in § 5.3, the departmental regulations have been amended to specify that each HHS Freedom of Information Officer has the authority to task agency organizational components to search for records in response to a FOIA request and provide records located to the cognizant FOIA office.

The proposed rule makes a number of changes to assist the public in navigating the FOIA process. The new § 5.2 asserts the Department's commitment to provide access to public records and increase openness and transparency. Section 5.22 has been further clarified to better inform requesters of the type of information they should include in a FOIA request. Sections 5.23 and 5.24 provide requesters with the information needed to submit a FOIA request electronically. Section 5.25(a) creates procedures for acknowledging FOIA requests. Section 5.25(c) describes how the FOIA Service Centers will attempt to seek clarification from requesters before closing ambiguous requests. Section 5.28(e) establishes a policy that encourages interim responses for requests that involve a voluminous amount of material or searches in multiple locations. Section 5.31(d)(4)(ii) increases the number of days to respond to a submitter notice from 5 working days to 10 working days and gives the Department and its Operating Divisions and Staff Divisions the option to extend this timeframe as necessary; this will allow submitters the opportunity to make more clearly articulated disclosure objections rather than seeking to broadly designate information as exempt. Section 5.52(a) provides the contact information for submitting an appeal and increases the number of calendar days within which an appeal must be received from 30 to 45. Finally, § 5.61 informs requesters of how long the Department retains records created in administering the Department's Freedom of Information Program.

The proposed rule includes changes to the HHS fee schedule and other fee-related items. Revisions to the HHS fee schedule can be found at § 5.43. The proposed rule also provides updated procedures for handling of advanced payments (§ 5.41(b)); negotiating fees (§ 5.41(e)); and costs for reproducing electronic records (§ 5.43(c)(2) and (3)), using special delivery (§ 5.43(d)), and certifying records (§ 5.43(e)). The proposed rule provides the Department the ability to waive fees as a matter of administrative discretion in § 5.45(e). Finally, § 5.42(b) increases the minimum threshold for fee charges.

Regulatory Analysis

Executive Order 12866

The proposed rule has been drafted and reviewed in accordance with Executive Order 12866, 58 FR 51735 (Sept. 30, 1993), section 1(b), Principles of Regulation, and Executive Order 13563, 76 FR 3821 (January 18, 2011), Improving Regulation and Regulatory Review. The proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the rulemaking has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Department certifies under 5 U.S.C. 605(b) that the proposed rule will not have a significant economic impact on a substantial number of small entities because the proposed revisions do not impose any burdens upon FOIA requesters, including those that might be small entities. Therefore, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

The proposed rule will not result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 12612

This proposal has been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Paperwork Reduction Act

The proposed rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 45 CFR Part 5

Freedom of information.

In consideration of the foregoing, HHS proposes to revise part 5 of title 45, Code of Federal Regulations, to read as follows:

PART 5—FREEDOM OF INFORMATION REGULATIONS

Subpart A—General Information About Freedom of Information Act Requests

Sec.
5.1 Purpose.
5.2 Presumption of openness and proactive disclosures.
5.3 Definitions.
5.4 Regulatory scope.
5.5 Interrelationship between the FOIA and the Privacy Act of 1974.

Subpart B—How To Request Records Under FOIA

5.21 Who can file a FOIA request?
5.22 What do I include in my FOIA request?
5.23 Where do I send my FOIA request?
5.24 Does HHS accept electronic FOIA requests?
5.25 How does HHS process my FOIA request?
5.26 How does HHS determine estimated completion dates for FOIA requests?
5.27 How do I request expedited processing?
5.28 How does HHS respond to my request?
5.29 How may I request assistance with the FOIA process?

Subpart C—Exemptions to Disclosure

5.31 What are the reasons records may be withheld?
5.32 Records not subject to the requirements of the FOIA—law enforcement exclusions.

Subpart D—Fees

5.41 General information on fees for all FOIA requests.
5.42 What fee policies apply to HHS records?
5.43 What is the FOIA fee schedule for obtaining records?
5.44 How does HHS calculate FOIA fees for different categories of requesters?
5.45 How may I request a fee waiver?

Subpart E—Appeals

5.51 When may I appeal HHS's FOIA determination?
5.52 How do I file an appeal?
5.53 How does HHS process appeals?
5.54 What avenues are available to me if I disagree with HHS's appeal decision?

Subpart F—Records Retention

5.61 How does HHS retain FOIA records?

Authority: 5 U.S.C. 552, 18 U.S.C. 1905, 31 U.S.C. 9701, 42 U.S.C. 1306(c), E.O. 12600, E.O. 13392.

Subpart A—General Information About Freedom of Information Act Requests

§ 5.1 Purpose.

This part implements the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, for Department of Health and Human Services (HHS) records that are subject to the FOIA. This part contains the rules that we follow to process FOIA requests, such as the amount of time we have to make a determination regarding the release of records, who can decide to release records and who can decide not to release them, the fees we may charge, if applicable, the reasons why some records are exempt from disclosure under the FOIA, and the administrative and legal remedies available should a requester disagree with our initial disclosure determination.

(a) The FOIA provides a right of access to agency records, except to the extent that any portions of the records are protected from public disclosure by an exemption or exclusion in the statute. The FOIA does not require us to perform research for you or to answer your questions. The FOIA does not require agencies to create new records or to perform analysis of existing records; for example, by extrapolating information from existing agency records, reformatting publicly available information, preparing new electronic programs or databases, or creating data through calculations of ratios, proportions, percentages, trends, frequency distributions, correlations, or comparisons. However, at our discretion and if it would conserve government resources, we may decide to supply requested information by consolidating information from various records.

(b) This part does not apply to:

(1) Records that are currently available, either from HHS or from another Federal government agency, under a statute that provides for charging fees for those records;

(2) Records that have been made publicly available by an HHS Staff Division or Operating Division or other Federal agency, as part of its regular program activity;

(3) Records that have been affirmatively and continuously posted online as required by subsection (a)(2) of the FOIA, which includes the following categories of records:

(i) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(ii) Those statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**;

(iii) Administrative staff manuals and instructions to staff that affect a member of the public;

(iv) Frequently requested records; and

(v) A general index of the records referred to under paragraph (b)(3)(iv) of this section;

(4) Data generated by an agency grant recipient under the provisions of 45 CFR part 75 to the extent the requirements of 45 CFR 75.322(e) do not apply to the data. We will not process your request under the FOIA or these regulations if that data is already available to the public through an archive or other source. In that situation, we will refer you to that other source; and

(5) Records requested from the System Manager of a Privacy Act system of records, pursuant to access provisions contained in the system's System of Records Notice (as described in 5 U.S.C. 552a(e)(4)), if the access request is fully granted by the System Manager under the Privacy Act, so that it is unnecessary to process the request under the FOIA. For information pertaining to the Privacy Act, please refer to 5 U.S.C. 552a, and the Department's Privacy Act regulations at 45 CFR part 5b. Privacy Act exemptions are not addressed in this regulation; they are addressed at 45 CFR 5b.11, and in the Privacy Act at 5 U.S.C. 552a(d)(5), (j), and (k).

§ 5.2 Presumption of openness and proactive disclosures.

In administering the FOIA, we are committed to providing access to public records as part of the Department's efforts to increase openness and transparency, but with due regard for protecting the legitimate interests of entities that have submitted records to the Department, the privacy interests of individuals who would be affected by release of records, and the interests of the agency in creating policy, making operating decisions and carrying out its mission.

(a) It is our policy to respond to all requests for records, irrespective of whether those requests conform to the requirements of these regulations. However, in order to preserve rights given to you by the FOIA and by this regulation (for example, the right to appeal if we deny your request and the right to have our appeal decision reviewed by a court), your request must be in writing and make reference to the FOIA. In certain exceptional circumstances, a Freedom of Information Office may, at its discretion, accept an oral request from you and reduce it to writing for you.

(b) [Reserved]

§ 5.3 Definitions.

The following definitions apply to this part:

Agency is defined at 5 U.S.C. 551(1). HHS is an agency. Private entities performing work under a contractual agreement with the government are not agencies for the purpose of this definition. However, information maintained for an agency under Government contract, for the purposes of records management, is considered an agency record.

Chief FOIA Officer means a senior official of HHS, at the Assistant Secretary or equivalent level, who has agency-wide responsibility for ensuring efficient and appropriate compliance with the FOIA, monitoring implementation of the FOIA throughout the agency, and making recommendations to the head of the agency to improve the agency's implementation of the FOIA. The Secretary of HHS has designated the Assistant Secretary, Office of the Assistant Secretary for Public Affairs (ASPA), as the Agency Chief FOIA Officer (ACFO); that official may be contacted at *HHS.ACFO@hhs.gov.*

Commercial use means a use or purpose that furthers a commercial, trade, or profit interest of the requester or the person or entity on whose behalf the request is made.

Department or HHS means the U.S. Department of Health and Human Services.

Deputy Agency Chief FOIA Officer (DACFO) means a designated official within the Office of the Assistant Secretary for Public Affairs, who has been authorized by the Chief FOIA Officer to act upon their behalf to implement compliance with the FOIA, as described above. This official is also the approving review authority for FOIA administrative appeals.

Direct costs mean those expenses that an agency incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

Duplication means the process of making a copy of a record and sending it to the requester, to the extent necessary to respond to the request. Such copies include both paper copies and electronic records. Fees for duplication are further explained within § 5.43.

Educational institution means a school, university, or other entity of learning that operates a program of scholarly research. To qualify for this category, a requester must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are sought to further a scholarly research goal of the institution, and not for a commercial use or purpose, or for individual use or benefit.

Expedited processing means the process set forth in the FOIA that allows requesters to request faster processing of their FOIA request, if they can demonstrate a specific compelling need.

Fee category means one of the four categories established by the FOIA to determine whether a requester will be charged fees for search, review, and duplication. The categories are: Commercial use requests; non-commercial scientific or educational institutions requests; news media requests; and all other requests. Fee categories are further explained within § 5.44.

Fee waiver means the waiver or reduction of fees if a requester is able to demonstrate that certain standards set forth in the FOIA and this part are satisfied, including that disclosure of the records is in the public interest and that the records are not requested to further a commercial interest.

First-party request means a request by an individual for records pertaining to that individual, or an authorized representative acting upon an individual's behalf.

FOIA Public Liaison means an agency official who reports to the agency Chief FOIA Officer and serves as a supervisory official to whom a requester can raise concerns about the service the requester has received from the FOIA Service Center. This individual is responsible for assisting in reducing delays, increasing transparency, and understanding of the status of requests, and assisting in the resolution of disputes.

FOIA request means a written request, which reasonably describes the records sought. We may contact a requester to clarify the records that are sought or to discuss the scope of the request.

Freedom of Information Act (FOIA) means the law codified at 5 U.S.C. 552 that provides the public with the right to request agency records from Federal executive branch agencies. A link to the text of the FOIA is at *http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/amended-foia-redlined-2010.pdf.*

Freedom of Information Officer means an HHS official who has been delegated the authority to release or withhold records; to assess, waive, or reduce fees in response to FOIA requests; and to determine whether to grant expedited processing. In that capacity, the Freedom of Information Officer has the authority to task agency organizational components to search for records in response to a FOIA request, and to provide records located in their office. Apart from records subject to proactive disclosure pursuant to subsection (a)(2) of the FOIA, only Freedom of Information Officers have the authority to release or withhold records or to waive fees in response to a FOIA request. Our FOIA operations are decentralized, and each FOIA Service Center listed in § 5.23 has a designated official with this authority; the contact information for each FOIA Service Center is also listed in § 5.23.

(1) The *HHS Freedom of Information Officer in the Office of the Secretary* means the HHS official who in addition to overseeing the daily operations of the FOIA program in that office and having the authority of a *Freedom of Information Officer,* is also responsible for the Department-wide administration and coordination of the FOIA and its implementing regulations and policies as they pertain to the programs and activities of the Department. This individual serves as the principal resource with respect to the articulation of procedures designed to implement and ensure compliance with the FOIA and its implementing regulations and policies as they pertain to the Department. This individual reports through the DACFO to the ACFO to support oversight and compliance with the OPEN Government Act.

(2) *Operating Division and Staff Division Freedom of Information Officers* means the officials who are responsible for overseeing the daily operations of their FOIA programs in their respective Operating Divisions or Staff Divisions of the Department, with the full authority as described in the definition of *Freedom of Information Officer* in this section. These individuals serve as the principal resource and authority for FOIA operations and implementation within their respective Operating Divisions or Staff Divisions.

Frequently requested records means records, regardless of form or format, that have been released to any person under the FOIA and that, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

Immediate Office of the Secretary (IOS) means the Office of the Secretary, responsible for operations and work of the Secretary. It includes the Office of the Deputy Secretary, Office of the Chief of Staff, Secretary's Counselors, the Executive Secretariat, the Office of Health Reform, and the Office of Intergovernmental and External Affairs.

Non-commercial scientific institution means an institution that is operated for the purpose of conducting scientific research and not at all on a basis that furthers the commercial, trade, or profit interests of any person or organization. We decide whether to grant a requester non-commercial status on a case-by-case basis, based on the requester's intended use of the requested records.

Office of the Inspector General (OIG) means the Staff Division within the Office of the Secretary (OS), which is responsible for protecting the integrity of HHS programs and the health and welfare of the beneficiaries of those programs. OIG is responsible for processing FOIA requests sent to its Office.

Office of the Secretary (OS) means the HHS's chief policy officer and general manager, who administers and oversees the organization, its programs and activities. The Deputy Secretary and a number of Assistant Secretaries and Staff Divisions support OS. The HHS FOIA Office within ASPA processes FOIA requests for records maintained by OS Staff Divisions other than the OIG and the Program Support Center (PSC). In certain circumstances and at the HHS FOIA Office's discretion, the HHS FOIA office may also process FOIA requests involving other HHS OpDivs, as further described in § 5.28(a).

Operating Divisions (OpDivs) means any of the following divisions within HHS which are subject to this regulation:

Office of the Secretary (OS)
Administration for Children and Families (ACF)
Administration for Community Living (ACL)
Agency for Healthcare Research and Quality (AHRQ)
Agency for Toxic Substances and Disease Registry (ATSDR)
Centers for Disease Control and Prevention (CDC)
Centers for Medicare & Medicaid Services (CMS)
Food and Drug Administration (FDA)
Health Resources and Services Administration (HRSA)
Indian Health Service (IHS)
National Institutes of Health (NIH)
Substance Abuse and Mental Health Services Administration (SAMHSA).

Other requester means any individual or organization whose request does not qualify as a commercial-use request, representative of the news media request (including a request made by a freelance journalist), or an educational or non-commercial scientific institution request.

Program Support Center (PSC) means the Program Support Center. The PSC FOIA Office is located within the Office of Assistant Secretary for Administration (ASA) (*i.e.,* within an OS Staff Division) and processes FOIA requests for certain OS records and FOIA requests and FOIA appeals for certain HHS OpDivs, as further described in § 5.23.

Reading room records are records that are required to be made available to the public without a specific request under 5 U.S.C. 552(a)(2). As referenced in § 5.1(b)(3), we make reading room records available to the public electronically through our Web pages (*http://www.hhs.gov/foia/reading/index.html*) and at the physical locations identified in § 5.23. Other records may also be made available at our discretion through our Web pages (*http://www.hhs.gov*).

Record means any information that would be an agency record when maintained by an agency in any format, including an electronic format; and any information that is maintained for an agency by an entity under Government contract, for the purposes of records management. This definition does not include materials available from the agency's libraries and reading rooms.

Redact means delete or mark over.

Representative of the news media means any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals, including print and online publications that disseminate news and make their products available through a variety of means to the general public. We do not consider requests for records that support the news-dissemination function of the requester to be a commercial use. We consider "freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity as working for that entity. A publishing contract provides the clearest evidence that a journalist expects publication; however, we also consider a requester's past publication record. We decide whether to grant a requester media status on a case-by-case basis, based on the requester's intended use of the requested records.

Review means examining records responsive to a request to determine whether any portions are exempt from disclosure. Review time includes processing a record for disclosure (*i.e.,* doing all that is necessary to prepare the record for disclosure), including redacting the record and marking the appropriate FOIA exemptions.

Search means the process of identifying, locating, and retrieving records to find records responsive to a request, whether in hard copy or in electronic form or format.

Staff Divisions (StaffDivs) means an organization component that provides leadership, direction, and policy and management guidance to the Office of the Secretary and the Department. The following StaffDivs are subject to the regulations in this part:

Immediate Office of the Secretary (IOS)
Assistant Secretary for Administration (ASA)
Assistant Secretary for Financial Resources (ASFR)
Assistant Secretary for Health (OASH)
Assistant Secretary for Legislation (ASL)
Assistant Secretary for Planning and Evaluation (ASPE)
Assistant Secretary for Public Affairs (ASPA)
Assistant Secretary for Preparedness and Response (ASPR)
Departmental Appeals Board (DAB)
Office of Civil Rights (OCR)
Office of the General Counsel (OGC)
Office of Global Affairs (OGA)
Office of the Inspector General (OIG)
Office of Medicare Hearings and Appeals (OMHA)
Office of the National Coordinator for Health Information Technology (ONC)

Submitter means any person or entity that provides commercial information to the agency, and includes individuals, corporations, other organizational entities, and state and foreign governments.

Tolling means temporarily stopping the running of a time limit. We may toll a request to seek clarification or to address fee issues, as further described in § 5.25.

§ 5.4 Regulatory scope.

The requirements in this part apply to all OpDivs and StaffDivs of HHS. Some OpDivs and StaffDivs may establish or continue to maintain additional rules because of unique program requirements, but such rules must be consistent with this part, the FOIA and the precedential case law which interprets it. If additional rules are issued, they must be published in the **Federal Register** and you may get copies online at *https://www.federalregister.gov/, http://www.regulations.gov/* or by contacting one of our FOIA Service Centers.

§ 5.5 Interrelationship between the FOIA and the Privacy Act of 1974.

The FOIA allows any person (whether an individual or entity) to request access to any Federal agency record. The Privacy Act, at 5 U.S.C. 552a(d), provides an additional right of access, allowing individuals to request records about themselves, if the records are maintained in a system of records (defined in 5 U.S.C. 552a(a)(5)).

(a) *Requesting your own records:* If you request records about yourself that are maintained within a system of records as defined by the Privacy Act, you should make your request in accordance with the Privacy Act and the Department's implementing regulations at 45 CFR part 5b. This includes requirements to verify your identity. If you request records about someone other than yourself, you may receive greater access if you submit appropriate documentation signed by the other person that certifies their identity and confirms that they have given their consent for you to have access to their records. If any of the FOIA Service Centers receive a Privacy Act request, they will forward it to the appropriate Privacy Act Officer. If you are an individual requesting your own records as described in this section, your request will be processed under the Privacy Act in coordination with the appropriate Privacy Act Officer. If an exemption under the Privacy Act applies, you may still be able to access your records, or a portion thereof, under the FOIA.

(b) *Requesting another individual's record.* If you request records that are about an individual other than yourself and do not have that individual's written consent (including authentication of that individual's identity), we will process your request under the FOIA.

Subpart B—How To Request Records Under FOIA

§ 5.21 Who can file a FOIA request?

Any individual, partnership, corporation, association, or public or private organization other than a Federal agency, regardless of nationality, may submit a FOIA request to us. The FOIA excludes Federal agencies from filing FOIA requests. However, state and local governments may file FOIA requests.

§ 5.22 What do I include in my FOIA request?

In your FOIA request:

(a) Describe the records you seek in sufficient detail to enable our staff to locate them with a reasonable amount of effort. The more information you provide, the better possibility we have of finding the records you are seeking. Information that will help us find the records would include:

(1) The agencies, offices, or individuals involved;

(2) The approximate date(s) when the records were created;

(3) The subject, title, or description of the records sought; and

(4) Author, recipient, case number, file designation, or other reference number, if available.

(b) Include your name, full mailing address, and phone number and if available, your email address. This information allows us to reach you faster if we have any questions about your request. It is your responsibility to keep your current mailing address up to date with the office where you have filed the FOIA request.

(c) If you are requesting the medical records of an individual other than yourself and you are not that individual's legally authorized representative, you should submit a Health Insurance Portability and Accountability Act (HIPAA) compliant release authorization form signed by the subject of records or the individual's legally authorized representative. The HIPAA Privacy Rule requires that an authorization form contain certain core elements and statements which are described in the Privacy Rule's requirements at 45 CFR 164.508. If you are submitting a request for Medicare records to CMS, CMS has a release authorization form at the following link: *https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/Downloads/CMS10106.pdf.*

(d) Mark both your letter and envelope, or the subject line of your email, with the words "FOIA Request."

(e) Before filing your request, you may find it helpful to consult the HHS FOIA Service Centers online at *http://www.hhs.gov/foia/contacts/index.html,* which provides additional guidance to assist in submitting a FOIA request to a specific HHS OpDiv or StaffDiv or to regional offices or divisions within an OpDiv or StaffDiv. You may also wish to check in the agency's electronic reading rooms available online at *http://www.hhs.gov/foia/reading/index.html,* to see if the information you wish to obtain is already available.

§ 5.23 Where do I send my FOIA request?

We have several FOIA Service Centers (FOIA offices) that process FOIA requests. You should send your FOIA request to the appropriate FOIA Service Center that you believe would have the records you seek. An up-to-date listing is maintained online at *http://www.hhs.gov/foia/contacts/index.html.*

(a) If you are requesting research data made available under the provisions of 45 CFR 75.322(e), requests for such data should be addressed to the HHS OpDiv that made the award under which the data were first produced. That OpDiv will process your request in accordance with established procedures consistent with the FOIA and 45 CFR 75.322(e).

(b) We officially receive your request when it reaches the FOIA Service Center with responsibility for the HHS OpDiv or StaffDiv where requested records are likely to be located, but no later than 10 working days after the request first arrives at any of our FOIA Service Centers.

(c) If you have questions concerning the processing of your FOIA request, you may contact the FOIA Service Center processing your request. If that initial contact does not resolve your concerns, you may wish to contact the designated FOIA Public Liaison for the OpDiv or StaffDiv processing your request. You can find a list of our FOIA Service Centers and Public Liaisons at *http://www.hhs.gov/foia/contacts/index.html.*

§ 5.24 Does HHS accept electronic FOIA requests?

Yes. The body of the message should contain all of the information listed in § 5.22. You also may file a FOIA request by emailing your request to the appropriate FOIA Service Center, as listed in the table provided in § 5.23. If an OpDiv or StaffDiv does not have a separate email or electronic link to submit a FOIA request, you may submit a FOIA request at the Department's main link at *https://requests.publiclink.hhs.gov/palMain.aspx.*

§ 5.25 How does HHS process my FOIA request?

(a) *Acknowledgement.* We acknowledge all FOIA requests in writing within 10 working days after receipt by the appropriate office. The acknowledgement letter or email informs you of your request tracking number, provides contact information, and informs you of any complexity we are aware of in processing that may lengthen the time required to reach a final decision on the release of the records. The acknowledgement letter or email or a subsequent communication may also seek additional information to clarify your request or to ask you to narrow the scope of a very large or broad request. Should we ascertain at any time while processing your request that another agency may possess the requested records, we will either refer your request to that agency and notify you of that referral, or advise you how to contact that agency.

(b) *Perfected requests.* (1) A request is considered to be perfected (*i.e.,* the 20 working day statutory response time begins to run) when—

(i) The request is received by the responsible FOIA office;

(ii) The requested records are reasonably described;

(iii) The request contains sufficient information to enable the FOIA office to contact the requestor and transmit records to the requestor; and

(iv) The requester has agreed to pay all or an established amount of applicable fees or requested a fee waiver.

(2) We provide at least 10 working days for you to respond to a request to perfect your request, after notification. Should you not answer any correspondence, or should the correspondence be returned as undeliverable, we reserve the right to administratively close the FOIA request.

(c) *Stops in processing time (tolling).* We may stop the processing of your request one time if we require additional information regarding the specifics of the request. Requests must reasonably describe the records sought and not be overly broad. If we determine that a request does not reasonably describe the records sought, we will attempt to contact you using the contact information you have provided. The processing time resumes upon our receipt of your response. We also may stop the processing of your request if we require clarification regarding fee assessments. If additional information or clarification is required, we will attempt to contact you using the contact information you have provided. The processing time will resume upon our receipt of your response. We will provide at least 10 working days after notification for you to respond to a request for additional information or clarification regarding the specifics of your request or fee assessment. Should you not answer any correspondence, or should the correspondence be returned as undeliverable, we reserve the right to administratively close the FOIA request.

(d) *Search cut-off date.* As the end or cut-off date for a records search, we use the date on which we first begin our search for documents responsive to your request, unless you specify an earlier cut-off date, or a specific date range for the records search. We will use the date of the first search in those cases when you request records "through the present," "through today," or similar language. The FOIA allows you to request existing agency records. The FOIA cannot be used to request records which the agency may create in the future in the course of carrying out its mission.

(e) *Processing queues.* We place FOIA requests in simple or complex processing queues to be processed in the order received, on a first-in, first-out basis, absent approval for expedited processing based upon a compelling need, as further explained and defined in § 5.27. For most non-expedited requests, we make a determination about release of the records you requested within 20 working days from when the appropriate office receives your request (simple queue processing). However, if unusual circumstances prevent us from making a decision within 20 working days, we will place your request into a complex processing queue, so that such cases do not delay the processing of simpler requests. We will notify you of potential complicating factors in our acknowledgement letter or email, or in subsequent communications regarding your request, and you may choose to limit the scope of your request to reduce the processing time for your request.

(f) *Complex processing queue factors.* We will place into a complex processing queue any request that cannot be completed within 20 working days due to unusual circumstances. You will be notified if it is necessary for us to take an additional ten working days to process your request. Unusual circumstances include the need to:

(1) Search for and collect the records from one or more offices or field locations that are separate from the office processing the request;

(2) Search for, collect, and review a voluminous number of records that are part of a single request;

(3) Consult with another OpDiv, StaffDiv or another agency having a substantial interest in the request before releasing records.

(g) *Aggregating requests.* For the purposes of satisfying unusual circumstances, we may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request, involving clearly related matters, that would otherwise involve unusual circumstances. In the event that requests are aggregated, they will be treated as one request for the purposes of calculating both response time and fees.

(h) *Complex processing schedule.* If we need to extend the deadline for more than an additional 10 working days as a result of unusual circumstances, we will ask if you wish to modify your request so that we can answer the request more quickly. If you do not wish to modify your request, we will provide you with an estimated date by which we expect to provide a response to your request.

§ 5.26 How does HHS determine estimated completion dates for FOIA requests?

(a) When you ask for an estimated completion date for the processing of records that do not require consultation with another agency, we estimate the completion date on the basis of our reasonable judgment as to how long it will take to complete the request. Given the uncertainty inherent in establishing any estimate, the estimated completion date is subject to change at any time.

(b) When you ask for an estimated completion date for records that must be reviewed by another agency, our estimate may also be based on information from the other agency.

§ 5.27 How do I request expedited processing?

(a) We can expedite requests, or segments of requests, only for records over which we have control. If we must refer a request to another agency, we will inform you and suggest that you seek expedited review from that agency.

(b) To request expedited processing, you must submit a statement, certified to be true and correct, explaining the basis for your need for expedited processing. You must send the request to the appropriate FOIA Officer at the address listed in § 5.23. You may request expedited processing when you first request records or at any time during our processing of your request or appeal.

(c) We process requests on an expedited basis whenever we determine that one or more of the following criteria exist:

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) There is an urgent need to inform the public about an actual or alleged Federal Government activity (this criterion applies only to those requests made by a person primarily engaged in disseminating information to the public).

(d) We will respond to your request for expedited processing within 10 calendar days of our receipt of your request to expedite. If we grant your request, the HHS OpDiv or StaffDiv responsible for the review of the requested records will process your request as a priority, and it will be processed as soon as practicable. We will inform you if we deny your request for expedited processing and provide you with appeal rights. If you decide to appeal that denial, we will expedite our review of your appeal.

§ 5.28 How does HHS respond to my request?

(a) The appropriate FOIA Officer will send you a response informing you of our release determination, including whether any responsive records were located, how much responsive material was located, whether the records are being released in full or withheld in full or in part, and any fees you must pay for processing of the request. The HHS FOIA Officer may, at their discretion, respond to similar requests or requests involving a common subject matter that have been submitted to multiple HHS OpDivs or StaffDivs, or to other FOIA requests which are deemed appropriate for a Departmental response.

(b) If we deny any part of your request, our response will explain the reasons for the denial, which FOIA exemptions apply to withheld records, and your right to appeal that determination. We will advise you of the number of pages withheld or the estimated volume of withheld records, unless providing such information would harm an interest protected by an applicable FOIA exemption. In order to exhaust your administrative remedies, you must file an administrative appeal in accordance with § 5.52, before initiating judicial review.

(c) Records may be withheld in full or in part if any of the nine FOIA exemptions apply. If we determine to withhold part of a record pursuant to an exemption, we will provide access to reasonably segregable non-exempt information contained in the record. On the released portion of the record, we indicate where the information has been redacted and the exemption(s) we applied, unless including that indication would harm an interest the exemption protects. In Subpart C of this part, we describe the scope of the exemptions to disclosure that may apply to agency records.

(d) We also may determine that a request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested records do not exist, cannot be located, or have been destroyed; or that the requested records are not readily reproducible in the form or format requested.

(e) If a request involves a voluminous amount of material or searches in multiple locations, we may provide you with interim responses if feasible and reasonably possible, releasing the records on a rolling basis.

(f) Copies of records in the format you request will be provided if the records already exist in that format or if they are reasonably and readily reproducible in the format you request.

§ 5.29 How may I request assistance with the FOIA process?

(a) If you have questions concerning the processing of your FOIA request, you should first contact the FOIA Service Center processing your request. Additionally, for assistance at any point in the FOIA process, you may contact the FOIA Public Liaison at the FOIA Service Center processing your request. The FOIA Public Liaison is responsible for assisting you to reduce delays, increasing transparency and understanding of the status of requests, and assisting to resolve any FOIA disputes. Some FOIA Service Centers allow you to check the status of your request online. You can find a list of our FOIA Service Centers and Public Liaisons at *http://www.hhs.gov/foia/contacts/index.html.*

(b) The Office of Government Information Services (OGIS), which is part of the National Archives and Records Administration, serves as the Federal FOIA ombudsman and assists requesters and agencies to prevent and resolve FOIA disputes. You may contact OGIS at the following address: National Archives and Records Administration, Office of Government Information Services, 8601 Adelphi Road—OGIS, College Park, MD 20740–6001, or by email at *ogis@nara.gov,* or by telephone at 202–741–5770 or 1–877–684–6448 (toll free).

Subpart C—Exemptions to Disclosure

§ 5.31 What are the reasons records may be withheld?

While we are committed to providing public access to as many of our records as possible, there are instances in which information falls within one or more of the FOIA's nine exemptions to disclosure. We review all records and weigh and assess all legal and policy requirements prior to making a final disclosure determination. A description of the scope of the nine FOIA exemptions is provided in paragraphs (a) through (i) of this section.

(a) *Exemption 1.* Exemption 1 requires our agency to withhold records that, as provided by FOIA, are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. When the release of certain records may adversely affect U.S. relations with foreign countries, we usually consult with officials of those countries or officials of the Department of State. Also, we may, on occasion, have in our possession records classified by some other agency. We will refer your request for such records to the agency that classified them and notify you that we have done so.

(b) *Exemption 2.* Exemption 2 authorizes our agency to withhold records that are solely related to the internal personnel rules and practices of an agency.

(c) *Exemption 3.* Exemption 3 requires our agency to withhold records which are specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)) provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or establishes particular criteria for withholding or refers to particular types of matters to be withheld; and if enacted after the date of enactment of the OPEN FOIA Act of 2009, October 28, 2009, specifically cites to 5 U.S.C. 552(b)(3).

(d) *Exemption 4.* Exemption 4 requires our agency to withhold trade secrets and commercial or financial information that is obtained from a person and that is privileged or confidential.

(1) *Trade secrets.* A secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.

(2) *Commercial or financial information.* We will not disclose

records where the information is "commercial or financial," is obtained from a person, and is "privileged or confidential."

(i) Information is "commercial or financial" if it relates to businesses, commerce, trade, employment, profits, or finances (including personal finances). We interpret this category broadly.

(ii) Information is "obtained from a person" if HHS or another agency has obtained it from someone who has a commercial or financial interest in the information. "Person" includes an individual, partnership, corporation, association, or public or private organization other than an agency. Information is not "obtained from a person" if it is generated by HHS or another Federal agency. Documents prepared by the government can still come within Exemption 4, however, if they simply contain summaries or reformulations of information supplied by a source outside the government, who retains a commercial or financial interest in the information.

(iii) Information is "privileged" if it would ordinarily be protected from disclosure in civil discovery by a recognized evidentiary privilege, such as the attorney-client privilege or the work product privilege. Information may be privileged for this purpose under a privilege belonging to a person outside the government, unless providing the information to the government rendered the information no longer protectable in civil discovery.

(iv) Information is "confidential" if it meets one of the following tests:

(A) Disclosure of information which was provided voluntarily to the Government may impair the government's ability to obtain necessary information in the future;

(B) Disclosure of information which was required to be provided to the Government will result in a diminution of quality and reliability of such information in the future;

(C) Disclosure would be likely to cause substantial harm to the competitive position of the person who submitted the information;

(D) Disclosure would impair other government interests, such as program effectiveness and compliance; or

(E) Disclosure would impair other private interests, such as an interest in controlling availability of intrinsically valuable records, which are sold in the market by their owner.

(3) *Designation of certain confidential information.* A person who submits records to the government may designate part or all of the information in such records as exempt from disclosure under Exemption 4 of the FOIA. The person may make this designation either at the time the records are submitted to the government or within a reasonable time thereafter. The designation must be in writing. Any such designation will expire ten years after the records were submitted to the government.

(4) *Predisclosure notification.* The procedures in this paragraph apply to records on which the submitter has designated information as provided in paragraph (d)(3) of this section. They also apply to records that were submitted to the government where we have substantial reason to believe that information in the records could reasonably be considered exempt under Exemption 4. Certain exceptions to these procedures are stated in paragraph (d)(5) of this section.

(i) When we receive a request for such records, and we determine that we may be required to disclose them, we will make reasonable efforts to notify the submitter about these facts. The notice will include a copy of the request, and it will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If we must notify a large number of submitters, we may do this by posting or publishing a notice in a place where the submitters are reasonably likely to become aware of it.

(ii) The submitter has 10 working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for its objections. FOIA Offices in HHS and its organizational components may extend this period as appropriate and necessary.

(iii) We review and consider all objections to release that we receive within the time limit. Any information provided by a submitter under this provision may itself be subject to disclosure under the FOIA. If a submitter does not respond to our agency within the specified time period, we will process the FOIA request without the submitter's input. If we decide to release the records, we inform the submitter in writing, along with our reasons for the decision to release. We include with the notice a description of the information to be disclosed or copies of the records as we intend to release them. We also inform the submitter that we intend to release the records within 5 working days after the date of the notice, unless ordered to do otherwise by a court of competent jurisdiction. We do not consider any information we receive after the date of a disclosure decision.

(iv) When a requester files suit under the FOIA to obtain records covered by this paragraph, we will promptly notify the submitter.

(v) If the requester files a lawsuit under the FOIA for access to records submitted to HHS, we promptly notify the submitter.

(vi) We will notify the requester in these circumstances:

(A) When we notify a submitter that it may be required to disclose information under the FOIA, we will also notify the requester that notice and opportunity to comment are being provided to the submitter;

(B) When the agency notifies a submitter of a final disclosure decision under the FOIA, and;

(C) When a submitter files a lawsuit to prevent the disclosure of the information.

(5) *Exceptions to predisclosure notification.* The notice requirements in paragraph (d)(4) of this section do not apply in the following situations:

(i) We determine that we should withhold the information under a FOIA exemption;

(ii) The information has been lawfully published or made available to the public

(iii) We are required by a statute (other than the FOIA), or by a regulation issued in accordance with the requirements of Executive Order 12600, to disclose the information; or

(iv) The designation made by the submitter appears obviously frivolous. However, in such a case, the agency must provide the submitter with written notice of any final disclosure determination and intent to release, within five working days prior to the specified disclosure date. We will notify the submitter as referenced in § 5.31(d)(4)(iii).

(e) *Exemption 5.* Exemption 5 protects inter-agency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. This exemption extends only those documents that are normally privileged in the civil discovery context. Some of the most commonly applicable privileges are described in the following paragraphs.

(1) *Deliberative process privilege.* This privilege protects predecisional deliberative communications. A document is predecisional if it is generated before the adoption of an agency policy, and does not necessarily have to point specifically to an agency final decision. The purpose of the privilege is to prevent injury to the quality of the agency decision making process by encouraging open and frank

internal policy discussions, by avoiding premature disclosure of policies not yet adopted, and by avoiding the public confusion that might result from disclosing reasons that were not in fact the ultimate grounds for an agency's decision. Purely factual material in a deliberative document is within this privilege only if it is inextricably intertwined with the deliberative portions so that it cannot reasonably be segregated, if it would reveal the nature of the deliberative portions, or if its disclosure would in some other way make possible an intrusion into the decisionmaking process. The privilege continues to protect predecisional communications even after a decision is made; additionally, predecisional, deliberative communications will remain protected even if a final decision is not achieved.

(2) *Attorney work product privilege.* This privilege protects documents prepared by or for an agency, or by or for its legal representatives in anticipation of litigation or for trial. It includes documents prepared for purposes of administrative adjudications as well as court litigation. It includes documents prepared by program offices and may include documents prepared by agency contractors in the authorized performance of agency duties, if requested by an attorney in anticipation of litigation. It includes factual material in such documents as well as material revealing opinions and tactics. Finally, the privilege continues to protect the documents even after the litigation is closed.

(3) *Attorney-client privilege.* This privilege protects confidential communications between a lawyer and an employee or agent of the government where there is an attorney-client relationship between them (typically, where the lawyer is acting as attorney for the agency and the employee is communicating on behalf of the agency) and where the employee has communicated information to the attorney in confidence in order to obtain legal advice or assistance.

(f) *Exemption 6.* Exemption 6 protects information about individuals in personnel and medical files and similar files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. This exemption authorizes us to withhold records about individuals if disclosure would constitute a clearly unwarranted invasion of their personal privacy. We utilize a balancing test in deciding whether to release records to you that contain personal or private information about someone else; that is, we weigh the foreseeable harm of invading that person's privacy against the public benefit that would result from the release.

(g) *Exemption 7.* Exemption 7 authorizes our agency to withhold records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information would cause the following harm(s):

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) *Exemption 8.* Exemption 8 authorizes the withholding of records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(i) *Exemption 9.* Exemption 9 permits the withholding of geological and geophysical information and data, including maps, concerning wells.

§ 5.32 Records not subject to the requirements of the FOIA—law enforcement exclusions.

Under the FOIA, there is special protection for three narrow categories of law enforcement and national security records. The provisions protecting those records are known as "exclusions." These exclusions expressly authorize Federal law enforcement agencies, under these exceptional circumstances, to treat the records as not subject to the requirements of the FOIA, and are further described as follows:

(a) The first exclusion protects the existence of an ongoing criminal law enforcement investigation when there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency and disclosure of the existence of records could reasonably be expected to interfere with enforcement proceedings.

(b) The second exclusion is limited to criminal law enforcement agencies and protects the existence of informant records when the informant's status has not been officially confirmed.

(c) The third exclusion is limited to the Federal Bureau of Investigation and protects the existence of foreign intelligence or counterintelligence, or international terrorism records when the existence of such records is classified.

(d) Should an HHS OpDiv or StaffDiv maintain records which are subject to a FOIA exclusion, and consider employing an exclusion or have a question as to the implementation of an exclusion, the OpDiv or StaffDiv will consult with the Office of Information Policy, U.S. Department of Justice.

(e) Because records falling within an exclusion are not subject to the requirements of the FOIA, should any HHS OpDiv or StaffDiv maintain such excluded records, the OpDiv or StaffDiv will limit its response to those records that are subject to the FOIA.

Subpart D—Fees

§ 5.41 General information on fees for all FOIA requests.

(a) We generally assume that when you request records you are willing to pay the fees we charge for services associated with your request. As referenced in § 5.42(c), you may specify a limit on the amount you are willing to spend. We will notify you if it appears that the fees will exceed the limit and ask whether you nevertheless want us to proceed with the search.

(b) If you have failed to pay FOIA fees in the past, we will require you to pay your past due bill and we may also require you to pay the anticipated fee before we begin processing your current request. If we estimate that your fees may be greater than $250, we also may require advance payment or a deposit before we begin processing your request. If you fail to make an advance payment within 10 working days after the date of our fee letter, we will close the request.

(c) We may charge interest on unpaid bills beginning on the 31st calendar day following the day the FOIA fee invoice was sent. We may assess interest, administrative costs, and penalties for overdue FOIA fee costs.

(d) If we determine that you (either acting alone or with a group of requesters) are breaking down a single request into a series of requests in order to avoid or reduce fees, we may aggregate all of these requests when calculating the fees. In aggregating requests, we may consider the subject matter of the requests and whether the requests were filed close in time to one another.

(e) If, in the course of negotiating fees, you do not respond to the agency within 10 working days of our last communication, your request will be closed.

(f) We may stop the processing of your request, if necessary, to clarify fee issues with you, and to confirm your willingness to pay applicable fees. Fee related issues may arise sequentially over the course of processing a request, and the FOIA allows agencies to stop the processing time as many times as necessary in order to clarify issues regarding fee assessment and willingness to pay fees.

§ 5.42 What fee policies apply to HHS records?

(a) We may charge search fees even if the records are exempt from disclosure, or if we do not find any responsive records during our search.

(b) We do not send an invoice to requesters if processing fees are less than $25.

(c) If estimated search or review fees exceed $250, we will contact you. If you have specified a different limit that you are willing to spend, we will contact you only if we estimate the fees will exceed that specified amount.

§ 5.43 What is the FOIA fee schedule for obtaining records?

In responding to FOIA requests for records, we charge the following fees, where applicable, unless we have given you a reduction or waiver of fees. Under the FOIA, fees are three-tiered, and the hourly charge is determined by the classification and grade level of the employee performing the search and review. The current FOIA fee schedules can be found on the *HHS.gov* Web site at *http://www.hhs.gov/foia/fees/index.html.*

(a) *Search fees*—(1) *Manual searches.* Fees will be assessed to search agency files and records in both hardcopy and electronic format. Such fees will be at the rate or rates for the classification of the employee(s) performing the search, as established in this section.

(2) *Computer searches.* We base the fees for computer searches on the actual cost to our agency of operating the computer and the salary of the operator.

(b) *Review fees.* (1) We charge review fees for time we spend examining documents that are responsive to a request to determine whether we must apply any FOIA exemptions to withhold information. Review time includes processing any record for disclosure (*i.e.,* doing all that is necessary to prepare the record for disclosure), including redacting the record and marking the appropriate FOIA exemptions. We charge review fees even if we ultimately are unable to disclose a record.

(2) We do not charge review fees for time we spend resolving general legal or policy issues regarding the application of exemptions. However, we do charge review fees for time we spend obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter.

(c) *Duplication fees*—(1) *Photocopying standard-sized pages.* The current charge for photocopying records can be found on the *HHS.gov* Web site at *http://www.hhs.gov/foia/fees/index.html.*

(2) *Reproduction of electronic records.* We charge you for our direct costs for staff time and to organize, convert, and format data for release, per requester instructions, and for printouts or electronic media necessary to reproduce electronic records requested under the FOIA. We will attempt to provide records in the format you sought, if the records are reasonably and readily reproducible in the requested format.

(3) *Copying other media.* We will charge you the direct cost of copying other media.

(d) *Mailing and special delivery fees.* We release records by United States Postal Service or, when appropriate, by electronic means, such as electronic mail or web portal. If a requester seeks special delivery, such as overnight shipping, we reserve the right to pass on the actual costs of special delivery to the requester. Requesters may provide their mailing account and billing information to the agency, so that they may pay directly for special delivery options.

(e) *Certification of records.* The FOIA does not require agencies to certify records as true copies. We may elect, as a matter of administrative discretion, to certify records upon request; however, such a request must be submitted in writing. Further, we will only certify as true copies records that have not left the agency's chain of custody. The charge for certification is $25.00 per record certified.

§ 5.44 How does HHS calculate FOIA fees for different categories of requesters?

(a) If you are a commercial use requester, we charge you fees for searching, reviewing, and duplicating responsive records.

(b) If you are an educational or noncommercial scientific institution requester, or a member of the news media, you are entitled to search time, review time, and up to 100 pages of duplication (or the cost equivalent for other media) without charge. We charge duplication fees after the first 100 pages (or its cost equivalent).

(c) If you do not fall into either of the categories in paragraphs (a) and (b) of this section, and are an "other requester," you are entitled to two hours of free search time, up to 100 pages of duplication (or the cost equivalent of other media) without charge, and you will not be charged for review time. We may charge for search time beyond the first two hours and for duplication beyond the first 100 pages (or its cost equivalent).

(d) We shall not assess search fees (or duplication fees for educational, scientific and media requesters) if the agency fails to comply with any time limit under 5 U.S.C. 552(a)(6) in processing that request; unless unusual or exceptional circumstances apply.

§ 5.45 How may I request a fee waiver?

(a) We will waive or reduce your fees for HHS records only if your request meets both of the following criteria:

(1) The request is in the public interest (*i.e.,* the information is likely to contribute significantly to public understanding of the operations or activities of the Government); and

(2) The request is not primarily in your commercial interest.

(b) To be eligible for a fee waiver or reduction you must explain:

(1) How the records you are requesting pertain to the operations and activities of the Federal Government. There must be a clear connection between the identifiable operations or activities of the Federal Government and the subject of your request;

(2) How the release will reveal meaningful information that the public does not already know about Federal Government activities. Disclosing information that is already in the public domain, in either the same or a substantially identical form, does not add anything new to the public's understanding of Government activities;

(3) How disclosure to you will advance public understanding of the issue;

(4) How your expertise or understanding of the requested records

as well as your ability and intention will effectively convey information to the public. We ordinarily presume that a representative of the news media satisfies this consideration;

(5) How you intend to disseminate the requested information to a broad spectrum of the public; and

(6) How disclosure will lead to a significantly greater understanding of the Government by the public.

(c) After reviewing your request and determining that there is a substantial public interest in release, we also determine if the request primarily furthers your commercial interests. If it does, you are not eligible for a fee waiver.

(d) You should ask for waiver or reduction of fees when you first submit your request to HHS, and should address the criteria referenced in this section.

(e) We may waive (either partially or in full) or reduce fees for records in additional circumstances as a matter of administrative discretion.

Subpart E—Appeals

§ 5.51 When may I appeal HHS's FOIA determination?

In order to fully exhaust all of your administrative remedies, you must file an appeal of an adverse agency determination. You may appeal when there is an adverse determination, including:

(a) Refusal to release a record, either in whole or in part;

(b) Determination that a record does not exist or cannot be found;

(c) Determination that the record you sought was not subject to the FOIA;

(d) Denial of a request for expedited processing;

(e) Denial of a fee waiver request; or

(f) Fee category determination.

§ 5.52 How do I file an appeal?

(a) You have the right to appeal an adverse agency determination of your FOIA request.

(b) You may submit your appeal via mail or electronically. All appeals must be in writing and received by HHS within 45 calendar days from the date of our final determination letter.

(1) Please send your appeal to the review official at the address provided in your denial letter. If you are unsure who is the appropriate review official, please contact the FOIA Service Center that processed your request to obtain that information.

(2) The addresses to mail FOIA appeals for CMS, the PSC and OS are, respectively: Centers for Medicare & Medicaid Services, Attn: Principal Deputy Administrator, Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244; U.S. Department of Health and Human Services (PSC), Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, 5600 Fishers Lane, Room 19–01, Rockville, MD 20857; U.S. Department of Health and Human Services, Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, Room 729H, 200 Independence Avenue SW., Washington, DC 20201. Additionally, information can be found at the following online locations for CMS, PSC, and OS: *https://www.cms.gov/Regulations-and-Guidance/Legislation/FOIA/filehow.html; http://www.psc.gov/psc_foia/guide.html;* and *http://www.hhs.gov/foia/FOIA%20Appeals/index.html.*

(3) For appeals submitted via mail, you should mark both your letter and envelope with the words "FOIA Appeal" and include your FOIA request tracking number, a copy of your initial request, and our final determination letter.

(c) Your appeal should clearly identify the agency determination that is being appealed. It would be helpful if you provide specific reasons explaining why you believe the agency's adverse determination should be reconsidered.

§ 5.53 How does HHS process appeals?

(a) We respond to your appeal within 20 working days after the appeal official designated in your appeal letter receives it. If, however, your appeal is based on a denial of a request for expedited processing, we will act on your appeal of that decision expeditiously. Before making a decision on an appeal of an adverse determination, the designated review official will consult with the Office of the General Counsel. Also, the concurrence of the Office of the Assistant Secretary for Public Affairs is required in all appeal decisions, including those on fees. When the review official responds to an appeal, that constitutes the Department's final action on the request.

(b) If we reverse or modify the initial decision, we will inform you in writing and, if applicable, reprocess your request. If we do not change our initial decision, we will respond in writing to you, explain the reasons for the decision, set out any FOIA exemptions that apply, and inform you of the provisions for judicial review. If a requester files a FOIA lawsuit in reference to an appeal, we will cease processing the appeal.

§ 5.54 What avenues are available to me if I disagree with HHS's appeal decision?

(a) In our response letter, we notify you of your right to seek judicial review of an adverse determination as set forth in the FOIA at 5 U.S.C. 552(a)(4)(B). If you wish to seek judicial review of any adverse determination, you must first appeal it administratively as described in this subpart.

(b) We also inform you that the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. As referenced in § 5.29(b) you may contact OGIS via mail, email, or telephone for assistance.

Subpart F—Records Retention

§ 5.61 How does HHS retain FOIA records?

We will preserve records created in administering the Department's Freedom of Information program until disposition is authorized under an applicable General Records Schedule or other records schedule duly approved by the Archivist of the United States.

Dated: June 7, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–13994 Filed 6–14–16; 8:45 am]

BILLING CODE 4150–25–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[Docket No. FRA–2014–0033, Notice No. 3]

RIN 2130–AC48

Train Crew Staffing

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: On March 15, 2016, FRA published a Notice of Proposed Rulemaking (NPRM) that would require establishing minimum requirements for the size of train crew staffs depending on the type of operation. FRA is announcing a public hearing to provide interested persons an opportunity to provide oral comments on the proposal. FRA is also announcing a reopening of the comment period for this proceeding to allow time for interested parties to submit written comments in response to

views or information provided at the public hearing.

DATES: A public hearing will be held on July 15, 2016, at 10:00 a.m. in Washington, DC. The comment period for the proposed rule published on March 15, 2016, (81 FR 13918) is open through June 15, 2016 (81 FR 30229). The comment period will reopen on July 15, 2016. Comments in response to views or information provided at the public hearing must be received by August 15, 2016.

ADDRESSES:

Public Hearing. The public hearing will be held at the National Housing Center of the National Association of Home Builders, 1201 15th Street NW., Washington, DC 20005.

Comments. You may submit comments identified by Docket Number FRA–2014–0033 by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking (RIN 2130–AC48). Note that FRA will post all comments received without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information about any submitted petitions, comments, or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph D. Riley, Railroad Safety Specialist, Operating Practices, Operating Crew Certification, U.S. Department of Transportation, Federal Railroad Administration, Mail Stop 25, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493–6318, or Mr. Alan H. Nagler, Senior Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC–10, Mail Stop 10, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493–6038.

SUPPLEMENTARY INFORMATION: Interested parties are invited to present oral statements and to offer information and views at the hearing. The hearing will be informal and will be conducted by a representative FRA designates under FRA's Rules of Practice (49 CFR 211.25). The hearing will be a non-adversarial proceeding. Therefore, there will be no cross examination of persons presenting statements or offering evidence. An FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements are completed those persons wishing to make a brief rebuttal will be given the opportunity to do so in the same order in which the initial statements were made. FRA will announce the additional procedures that are necessary to conduct the hearing, at the hearing. The purpose of this hearing is to receive oral comments in response to an NPRM that requested public comment on a potential train crew staffing rulemaking. *See* 81 FR 13918, March 15, 2016. FRA will add a transcript of the discussions to the public docket in this proceeding.

Public Participation Procedures. Any person wishing to make a statement at the hearing should notify Mr. Riley by telephone, email, or in writing, at least 5 working days before the date of the hearing and submit three copies of the oral statement that he or she intends to make at the proceeding. The notification should identify the party the person represents, the particular subject(s) the person plans to address, and the time requested. The notification should also provide the participant's mailing address and other contact information. FRA reserves the right to limit participation in the hearing of persons who fail to provide such notification. FRA also reserves the right to limit the duration of presentations if necessary to afford all persons with the opportunity to speak.

For information on facilities or services for persons with disabilities, or to request special assistance at the hearing, contact FRA Program Analyst, Mr. Kenton Kilgore, by telephone, email, or in writing, at least 5 working days before the date of the hearing. Mr. Kilgore's can be reached at Federal Railroad Administration, Office of Railroad Safety, Mail Stop 25, 1200 New Jersey Avenue SE., Washington, DC 20590; (202) 493–6286; or *Kenton.Kilgore@dot.gov.*

Reopening of Comment Period. The comment period for the proposed rule published on March 15, 2016, (81 FR 13918) is currently open through June 15, 2016 (81 FR 30229). A public hearing is scheduled after the close of this comment period. To accommodate the public hearing and to afford interested parties the opportunity to submit comments in response to views or information provided at the public hearing, FRA will reopen the comment period for the proposed rule on July 15, 2016. Comments in response to views or information provided at the public hearing must be received by August 15, 2016.

Privacy Act

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *www.regulations.gov* or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–14124 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160502383–6483–01]

RIN 0648–BG05

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Recreational Management Measures; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advanced notice of proposed rulemaking; request for comments.

SUMMARY: This notice announces the establishment of a control date of December 31, 2015, that the Gulf of Mexico Fishery Management Council (Council) may use if it decides to create an allocation-based program for Gulf of Mexico (Gulf) reef fish headboats that participate in the Southeast Region Headboat Survey (SRHS). Vessels that begin participating in the SRHS after the control date may not be able to participate in the proposed program, and landings after the control date may not be used in determining allocations. NMFS invites comments on the establishment of this control date.

DATES: Written comments must be received by July 15, 2016.

ADDRESSES: You may submit comments on the proposed rule identified by "NOAA–NMFS–2016–0056" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0056,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Susan Gerhart, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: In early 2015, the Council requested the development of Amendment 42 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (Amendment 42) to address management for the headboat component of the Gulf reef fish fishery recreational sector. Management measures under consideration in Amendment 42 include allocation-based programs. The purpose of the proposed measures in Amendment 42 is to reduce management uncertainty and improve economic conditions for operators and owners of Gulf reef fish headboats, and provide flexibility by increasing fishing opportunities for their angler passengers through a management program for Gulf headboats participating in the SRHS.

In the Gulf, there is a Federal charter vessel/headboat permit for reef fish and the permit does not distinguish between headboats and charter vessels. The SRHS collects catch and effort data from headboats in the Southeast Region, thereby producing a catch history for each vessel included in the survey. In addition, for fishery managers, the SRHS continues to be the sole source for effort and landings estimates for the headboat component as a whole. For these reasons, the vessels eligible to participate in the program developed in Amendment 42 are those vessels with Federal charter vessel/headboat permits for reef fish that also have landings in the SRHS. The availability of vessel-specific landings data through the SRHS may allow development of an allocation-based management program for headboats using those landings histories.

This notice informs current and potential participants in the headboat component of the Gulf reef fish fishery that the Council intends to consider limiting participation in any allocation-based management program developed through Amendment 42 to only vessels with landings in the SRHS on or before December 31, 2015. Vessels joining the SRHS after this date may not be eligible to participate in an allocation-based program that could be developed as part of Amendment 42, and landings after this control date may not be used in determining possible allocations. An analysis of specific biological, economic, and social effects will be presented in Amendment 42.

Publication of the control date of December 31, 2015, in the **Federal Register** informs reef fish fishery participants of the Council's considerations, and gives notice to anyone entering the reef fish fishery after the control date that they would not be assured of participating in the allocation-based program should the program be implemented using the control date as an eligibility criterion. Implementation of any such program requires preparation of an amendment to the respective fishery management plan and publication of a notice of availability and proposed rule in the **Federal Register** with public comment periods, and, if approved by the Secretary of Commerce, issuance of a final rule.

The establishment of a control date does not commit the Council or NMFS to any particular management decisions. The Council may or may not make use of this control date as part of the requirements for any allocation-based management program developed through Amendment 42. Fishermen are not guaranteed future participation in a possible program, regardless of their entry date into the fishery. The Council may take action that would affect participants who were in the SRHS prior to the control date, or the Council may choose to take no further action to develop an allocation-based management program.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the headboat component of the Gulf reef fish fishery and the SRHS.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 9, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–14082 Filed 6–14–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 160328287–6486–01]

RIN 0648–BF94

Atlantic Highly Migratory Species (HMS); Porbeagle Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to implement the International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendation 15–06 regarding porbeagle sharks (*Lamna nasus*) caught in association with ICCAT fisheries. Recommendation 15–06 requires, among other things, fishing vessels to promptly release unharmed, to the extent practicable, porbeagle sharks caught in association with ICCAT fisheries when brought alive alongside for taking on board the vessel. This action would affect fishermen fishing in the commercial HMS pelagic longline fishery and the HMS recreational fisheries for tunas, swordfish, and billfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action would implement an ICCAT recommendation, consistent with the Atlantic Tunas Convention Act (ATCA), and would further domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received by July 15, 2016. An operator-assisted public conference call and webinar will be held on July 5, 2016, from 1:00 p.m. to 3:00 p.m., EST.

ADDRESSES: The conference call information is phone number 1 (888) 989–4573; participant passcode 9905999. Participants are strongly encouraged to log/dial in fifteen minutes prior to the meeting. NMFS will show a brief presentation via webinar followed by public comment. To join the webinar go to: *https://noaaevents2.webex.com/noaaevents2/onstage/g.php?MTID=e0db6c21990ed890e2857b1eb1746cd71*, event password: NOAA, event number: 990 192 262. Participants that have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar.

You may submit comments on this document, identified by NOAA–NMFS–2016–0066, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0066*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Margo Schulze-Haugen, Chief, Atlantic HMS Management Division at 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Larry Redd, Carrie Soltanoff, or Karyl Brewster-Geisz by phone at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP). Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 927 *et seq.* ATCA requires the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement ICCAT recommendations.

At its 24th Annual Meeting in 2015, ICCAT adopted Recommendation 15–06 on "Porbeagle [Sharks] Caught in Association with ICCAT Fisheries." Recommendation 15–06 requires, among other things, fishing vessels ". . . to promptly release unharmed, to the extent practicable, porbeagle sharks caught in association with ICCAT fisheries when brought alive alongside for taking on board the vessel." Recommendation 15–06 notes that, according to the ICCAT Standing Committee for Research and Statistics (SCRS), biomass of northwest Atlantic and northeast Atlantic porbeagle sharks is depleted to well below the biomass at maximum sustainable yield, but recent fishing mortality is below the fishing mortality at maximum sustainable yield (*i.e.,* the stocks are overfished but overfishing is not occurring). Recommendation 15–06 further notes that the 2008 and 2012 Ecological Risk Assessments concluded that porbeagle shark was among the most vulnerable of shark species, which, even at low fishing mortality levels, makes it more susceptible to overfishing. Thus, Recommendation 15–06 was adopted by ICCAT to reduce fishing mortality of porbeagle sharks caught in association with ICCAT fisheries in order to reduce porbeagle shark fishing even further, and thus assist in rebuilding stocks which are currently overfished.

In this proposed rule, NMFS considers changes to the regulations at 50 CFR part 635 consistent with Recommendation 15–06. Specifically, NMFS is proposing regulatory changes that would require fishermen to release unharmed, to the extent practicable, any live porbeagle sharks that are caught in association with ICCAT fisheries, including commercial fishermen that use pelagic longline gear or recreational fishermen that hold an HMS recreational permit and retain tunas, swordfish, or billfish. The proposed regulations would not affect HMS recreational fishermen who retain sharks and do not retain tunas, swordfish, or billfish, since such fishing would not be "in association with" fishing for tuna and tuna-like species.

Currently, very few porbeagle sharks are kept annually by commercial and recreational HMS fishermen, as shown by analysis of data collected from 2010 through 2015. HMS pelagic longline fishery logbook data indicate that 3 to 23 porbeagle sharks were retained annually from 2010 through 2012 and no porbeagle sharks were retained from 2013 through 2015. According to HMS logbook data, of the porbeagle sharks that were caught, on average 554 porbeagle sharks were released alive each year (approximately 74 percent of those caught) and 193 were released dead each year (approximately 26 percent of those caught). Pelagic Observer Program (POP) data from 2010 through 2015 show similar trends. Specifically, POP data indicate that no porbeagle sharks were kept from 2010 through 2014 and one porbeagle shark was kept in 2015 (likely misidentified as a shortfin mako by the vessel owner). Of those observed caught, on average 66 porbeagle sharks were released alive each year (approximately 63 percent of those caught) and 36 were discarded dead per year (approximately 34 percent of those caught). Thus, according to HMS logbook and POP data, approximately 97 percent of porbeagle sharks were released (alive and dead) from 2010–2015.

Based on recreational data collected from the Large Pelagics Survey (LPS), which covers federal and state waters from Virginia to Maine, from 2010 through 2015, NMFS estimates that on average 86 porbeagle sharks were kept annually and 746 were released alive, for an average annual release of approximately 90 percent. LPS data indicate that no porbeagle sharks were discarded dead between 2010 and 2015. Specific to HMS Charter/Headboat vessels, NMFS estimates that on average 15 porbeagle sharks were kept annually and 146 were released, for an average annual release of approximately 91 percent. It is unknown whether the porbeagle sharks that were kept were dead or alive when brought to the vessel.

Under current regulations, commercial and recreational HMS fishermen that operate in ICCAT fisheries are authorized to retain any porbeagle shark, regardless of whether the shark is dead or alive at haulback. Even so, most fishermen keep very few porbeagle sharks and 90 percent or more of porbeagle sharks are released. Under the proposed rule, all live porbeagle sharks would have to be released by commercial and recreational HMS fishermen operating in ICCAT fisheries, as determined by the permits they hold or, in the case of recreational fisheries, whether they have also retained tuna-like species on a given trip. Because so few porbeagle sharks are kept now, NMFS expects that this proposed rule would have little ecological impact. If there are any ecological impacts, those impacts would be beneficial, and would only apply to those few sharks that otherwise would have been retained rather than released alive (approximately 23 sharks kept in the commercial pelagic longline fishery before 2013 and the approximately 86 sharks kept annually in HMS recreational fisheries). Additionally, among the approximately 86 porbeagle sharks retained annually in HMS recreational fisheries, those ecological benefits would apply only when fishermen were also retaining tunas, swordfish, or billfish; if the porbeagle sharks were caught by fishermen not retaining tunas, swordfish, or billfish, porbeagle sharks could still be retained under this proposed rule. Similarly, under the proposed rule, these few porbeagle sharks may still be retained by all fishermen if the sharks are dead when brought to the vessel. Furthermore, because the commercial and recreational data indicate that fishermen already release 90 to 97 percent of porbeagle sharks, it is unlikely that a requirement to release live sharks would result in social or economic impacts on fishermen fishing in association with ICCAT fisheries. Therefore, this action is expected to have neutral socioeconomic impacts.

Request for Comments

NMFS is requesting comments on this proposed rule which would require commercial and recreational HMS fishing vessels fishing in ICCAT fisheries to release unharmed, to the extent practicable, porbeagle sharks that are alive when brought alongside a vessel. Comments on this proposed rule may be submitted via *http://www.regulations.gov,* or by mail. Written comments must be received by July 15, 2016. Please see the **ADRRESSES** section for more information about submitting comments.

Public Conference Call and Webinar

NMFS is requesting comments on the measures and analyses described in this proposed rule. During the comment period, NMFS will hold one conference call and webinar for this proposed rule. The conference call and webinar will be held on July 5, 2016, from 1:00–3:00 p.m. EST. Please see the **DATES** and **ADDRESSES** headings for more information. The public is reminded that NMFS expects participants on phone conferences to conduct themselves appropriately. At the beginning of the conference call, a representative of NMFS will explain the ground rules (*e.g.,* all comments are to be directed to the agency on the proposed action; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; attendees may not interrupt one another; etc.). NMFS representative(s) will structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and those that do not may be removed from the conference call.

Public hearings on this proposed rule are not currently scheduled. If you would like to request a public hearing, please contact Larry Redd, Carrie Soltanoff, or Karyl Brewster-Geisz by phone at 301–427–8503.

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS has made a preliminary determination that this action qualifies to be categorically excluded from the requirement to prepare an environmental assessment in accordance with NMFS' Environmental Review Procedures for Implementing the National Environmental Policy Act (NOAA Administrative Order 216–6), subject to further consideration after public comment. Section 6.03a.3.(b)(1) of the Administrative Order specifies that an action may be categorically excluded from further NEPA analysis where, "the action is an amendment or change to a previously analyzed and approved action and the proposed change has no effect individually or cumulatively on the human environment. . . ." In Amendment 2 to the 2006 Consolidated HMS FMP, NMFS adopted a rebuilding plan and TAC for porbeagle sharks, which were overfished but without overfishing occurring. Through the amendment, a commercial quota of 1.7 mt dw was established, and NMFS estimated that commercial discards would be approximately 9.5 mt dw, and recreational catch, including landings in tournaments, would be approximately 0.1 mt dw per year. The overall TAC of 11.3 mt dw was adopted to increase the likelihood that fishing mortality would remain low, allowing the stock to rebuild within 100 years as set out in a rebuilding plan in the Final Environmental Impact Statement. The final rule acknowledged that while some bycatch of porbeagle sharks would continue, the majority of porbeagle sharks caught are discarded alive. This action implementing ICCAT Recommendation 15–06 only slightly modifies the fishing practices analyzed in an extensive Environmental Impact Statement for Amendment 2 to require the release of sharks, all but a handful of which are already being released under the management measures previously adopted and analyzed. Thus, this action is properly considered a minor change to a previously-analyzed and approved action (Amendment 2 to the 2006 Consolidated HMS FMP; 73 FR 40658; July 15, 2008), and one which is expected to have no effect individually or cumulatively on the human environment.

NMFS determined that this proposed rule, if adopted, would not affect the coastal zone of any state, and a negative determination pursuant to 15 CFR 930.35 is not required. Therefore, pursuant to 15 CFR 930.33(a)(2), coordination with appropriate state agencies under section 307 of the CZMA is not required. Since 90 to 97 percent of porbeagle sharks in the U.S. HMS fisheries currently are released, this rule, if adopted, is not expected to result in ecological, social, or economic impacts beyond the few additional sharks that will be released alive as a result. Given the high vulnerability of the species at low fishing mortality, this proposed rule would assist in the overall reduction of fishing mortality for porbeagle sharks in the Northwest Atlantic. Although interactions between U.S. fleets and porbeagle sharks are minor, because the ICCAT measure was adopted by multiple parties, U.S. compliance in addition to compliance by other nations would provide long-term benefits for the Atlantic-wide porbeagle stock.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule to implement ICCAT Recommendation 15–06 on porbeagle sharks, if adopted, would not have a significant economic impact on a substantial number of small entities under section 605(b) of the Regulatory Flexibility Act (RFA).

As discussed above, this proposed rule is necessary to implement ICCAT recommendations, as required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act. Under ATCA, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out ICCAT recommendations. The proposed action considers implementing ICCAT Recommendation 15–06 on porbeagle sharks, in the Atlantic HMS fisheries that target tuna and tuna-like species because the National Marine Fisheries Service (NMFS) considers these fisheries to be "ICCAT-managed fisheries."

ICCAT Recommendation 15–06 requires, among other things, fishing vessels ". . . to promptly release unharmed, to the extent practicable, porbeagle sharks caught in association with ICCAT fisheries when brought alive alongside for taking on board the vessel." The regulatory changes would affect HMS vessels that catch sharks in ICCAT fisheries on commercial vessels that deploy pelagic longline gear and HMS Angling and Charter/Headboat (CHB) vessels that retain tunas, swordfish, or billfish. The proposed regulations would not affect HMS-permitted fishermen who do not retain tunas, swordfish, or billfish.

NMFS has estimated that, as of October 2015, 280 vessels were issued an Atlantic Tunas Longline permit and can be reasonably assumed to use pelagic longline gear, and could be affected by this action. Of the 3,596 vessels that were issued an Atlantic HMS CHB permit only those vessels that retain porbeagle sharks at the same time as tunas, swordfish, or billfish would be affected by this action. Between 2010 and 2015, fewer than one percent of CHB vessels issued permits retained porbeagle sharks; NMFS does not know how many of those that retained porbeagle sharks also retained tunas, swordfish, or billfish during the same trip. As such, NMFS estimates that, at most, fewer than one percent of all CHB vessels would be affected by this action. Those Atlantic HMS CHB vessels that do not retain porbeagle sharks or that do not retain tunas, swordfish, or billfish would not be affected by this action. Most commercial pelagic longline and Atlantic HMS CHB vessels have not historically interacted with porbeagle sharks as detailed below.

For the purpose of this analysis, all fishermen affected by this rule are considered small entities based on the historical levels of revenue earned by these fishing vessels. HMS pelagic longline fishery logbook data indicate that 3 to 23 porbeagle sharks were retained annually by four vessels from 2010 through 2012 and no porbeagle sharks were retained from 2013 through 2015. From 2010 through 2015, vessels made an average of 1,386 trips per year. Only 18 of those trips on average interacted with porbeagle sharks (approximately 1 percent of all trips). According to HMS logbook data, of the porbeagle sharks that were caught, on average 554 were released alive each year (approximately 74 percent of those caught) and 193 were released dead each year (approximately 26 percent of those caught). Pelagic Observer Program (POP) data from 2010 through 2015 show similar trends. Specifically, POP data indicate that no porbeagle sharks were kept from 2010 through 2014 and one porbeagle shark was kept in 2015. NMFS believes that this one porbeagle shark reported by the observer was likely misidentified as a shortfin mako by the vessel owner. Of those observed caught, on average 66 porbeagle sharks were released alive each year (approximately 63 percent of those caught) and 36 were discarded dead per year (approximately 34 percent of those caught). Thus, according to HMS logbook and Pelagic Observer Program data, approximately 97 percent of porbeagle sharks were released (alive and dead) from 2010–2015.

Based on recreational data collected from the Large Pelagics Survey (LPS), which covers federal and state waters from Virginia to Maine, from 2010 through 2015, NMFS estimates that on average 86 porbeagle sharks were kept annually and 746 were released alive by Atlantic HMS recreational vessels, for an average annual release of approximately 90 percent. LPS data indicate that no porbeagle sharks were discarded dead between 2010 and 2015. Specific to CHB vessels, NMFS estimates that on average approximately 15 porbeagle sharks were kept annually and 146 were released, for an average annual release of approximately 91 percent. It is unknown whether the porbeagle sharks that were kept were dead or alive when brought to the vessel.

HMS dealer data indicate that total ex-vessel revenues from porbeagle sharks caught on pelagic longline gear ranged from approximately $560 per year to $4,040 per year from 2010 through 2012. From 2013 through 2015, no porbeagle sharks were kept and no resulting revenue was earned. Thus, this action would likely not result in significant operational changes or adverse socioeconomic impacts on commercial HMS fishermen. This proposed rule is intended to ensure U.S. compliance with ICCAT Recommendation 15–06 and would continue to be consistent with the objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments, as well as other requirements. Because this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 9, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.21, add paragraph (c)(1)(iii) to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) * * *

(1) * * *

(iii) Has pelagic longline gear on board, persons aboard that vessel are required to release unharmed, to the extent practicable, porbeagle sharks that are alive at the time of haulback.

* * * * *

■ 3. In § 635.22, add paragraph (a)(3) to read as follows:

§ 635.22 Recreational retention limits.

(a) * * *

(3) Vessels issued an HMS General Category permit under § 635.4(d) that are participating in an HMS registered tournament, vessels issued a HMS Angling category permit under § 635.4(c), or vessels issued a HMS Charter/Headboat permit under § 635.4(b) are required to release unharmed, to the extent practicable, porbeagle sharks that are alive at the time of haulback if swordfish, tuna, or billfish are retained or possessed on board, or offloaded from, the vessel during that trip.

* * * * *

■ 4. In § 635.24, add paragraph (a)(10) to read as follows:

§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.

* * * * *

(a) * * *

(10) Notwithstanding other provisions in this paragraph (a), vessels issued a permit under this part that have pelagic longline gear on board or on vessels issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish, or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel, are required to release unharmed, to the extent practicable, porbeagle sharks that are alive at the time of haulback.

* * * * *

■ 5. In § 635.71, add paragraph (d)(20) to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(20) Retain, possess, or land porbeagle sharks that were alive at the time of haulback as specified in §§ 635.21(c)(1)(iii), 635.22(a)(3), and 635.24(a)(10).

* * * * *

[FR Doc. 2016–14081 Filed 6–14–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 115
Wednesday, June 15, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS–ST–16–0046]

Plant Variety Protection Board; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the Agricultural Marketing Service (AMS) is announcing a meeting of the Plant Variety Protection Board (Board). The meeting is being held to discuss a variety of topics including, but not limited to, work and outreach plans, subcommittee activities, and proposals for procedure changes. The meeting is open to the public. This notice sets forth the schedule and location for the meeting.

DATES: Wednesday, July 27, 2016, from 1:00 p.m. to 3:00 p.m.

ADDRESSES: The Board meeting will be held at the United States Department of Agriculture, Room 3543, South Building, 1400 Independence Avenue SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Maria Pratt, Program Analyst, U.S. Department of Agriculture (USDA), AMS, Science and Technology Programs, 1400 Independence Avenue SW., Washington, DC 20250. Telephone: (202) 720–1104; Fax: (202) 260–8976, or Email: *maria.pratt@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 10(a) of the FACA (5 U.S.C., Appendix 2), this notice informs the public that the Plant Variety Protection Office (PVPO) is having a Board meeting earlier than the 15 day requirement of the FACA. The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) provides legal protection in the form of intellectual property rights to developers of new varieties of plants, which are reproduced sexually by seed or are tuber-propagated. A Certificate of Plant Variety Protection (PVP) is awarded to an owner of a crop variety after an examination shows that it is new, distinct from other varieties, genetically uniform and stable through successive generations. The term of protection is 20 years for most crops and 25 years for trees, shrubs, and vines. The PVPA also provides for a statutory Board (7 U.S.C. 2327). The PVPA Board is composed of 14 individuals who are experts in various areas of development and represent the seed industry sector, academia and government. The duties of the Board are to: (1) Advise the Secretary concerning the adoption of rules and regulations to facilitate the proper administration of the PVPA; (2) provide advisory counsel to the Secretary on appeals concerning decisions on applications by the PVP Office and on requests for emergency public-interest compulsory licenses; and (3) advise the Secretary on any other matters under the Regulations and Rules of Practice and on all questions under Section 44 of the PVPA, "Public Interest in Wide Usage" (7 U.S.C. 2404).

The purpose of the meeting will be to discuss the PVPO 2016 achievements, the electronic application system, the report of the subcommittee to evaluate molecular techniques for PVP distinctness characterization, and PVPO strategic planning.

Agenda Items: The agenda will include, welcome and introductions, discussions on program activities that encourage the development of new plant varieties and also address appeals to the Secretary. There will be presentations on 2016 accomplishments, the electronic PVP application system, the use of molecular markers for PVP applications, and PVPO strategic planning. The meeting will be open to the public. Those wishing to participate are encouraged to pre-register by July 20, 2016 by contacting Maria Pratt, Program Analyst; Telephone: (202) 720–1104; Email: *maria.prat@ams.usda.gov.*

Meeting Accommodation: If you need a reasonable accommodation to participate in this public meeting, please notify Maria Pratt at: Email: *maria.pratt@ams.usda.gov* or (202) 720–1104. Determinations for reasonable accommodation will be made on a case-by-case basis. Minutes of the meeting will be available for public review at the internet Web site *http://www.ams.usda.gov/PVPO.*

Dated: June 10, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–14164 Filed 6–14–16; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Forest Service

Hood and Willamette Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hood and Willamette Resource Advisory Committee (RAC) will meet in Salem, Oregon. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/detail/willamette/workingtogether/advisorycommittees/?cid=STELPRDB5048434.*

DATES: The meeting will be held on July 6, 2016, beginning at 10:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Bureau of Land Management, Salem District, 1717 Fabry Rd. SE., Salem, Oregon.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Willamette National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jennifer Lippert, RAC Coordinator, by phone at 541–225–6440 or via email at *jlippert@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Familarize RAC members with each other;
2. Review Secure Rural School rules and regulations pertaining to the Title II process; and
3. Make decisions on proposals submitted for FY2015 Title II funds.

The meeting is open to the public. The agenda will include review of proposals and recommended funding levels and voting on final funding recommendations.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: May 6, 2016.

Tracy Beck,

Forest Supervisor.

[FR Doc. 2016–14143 Filed 6–14–16; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of monthly planning meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that meetings of the West Virginia Advisory Committee to the Commission (WV Advisory Committee) will convene by conference call at 12:00 p.m. (EDT) on each of the following Tuesdays: June 28, July 26, and August 23, 2016. The purpose of each meeting is to discuss project planning of the Mental Health Project and topics for the Committee's future civil rights review. Members will also nominate and select additional Committee officers at one of the meetings.

Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–888–481–2844 and conference call ID: 6047709. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1-800–977–8339 and providing the operator with the toll-free conference call-in number: 1–888–481–2844 and conference call ID: 6047709.

Members of the public are invited to make statements to the WV Advisory Committee during the scheduled open comment period. In addition, members of the public are invited to submit written comments; the comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://facadatabase.gov/committee/meetings.aspx?cid=281;* click the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

I. Welcome and Introductions
  —Rollcall
  Planning Meeting
  —Discuss Mental Health Project and Other Topics for Civil Right Project
II. Other Business
  Adjournment

DATES: The following Tuesdays: June 28, July 26, and August 23, 2016.

Time: Each meeting starts at 12:00 p.m. (EDT).

Public Call-In Information: Conference call-in number: 1–888–481–2844 and conference call ID: 6047709.

TDD: Dial Federal Relay Service at 1–800–977–8339 and give the operator the above toll-free conference call-in number and conference call ID.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

Dated: June 10, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–14128 Filed 6–14–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the National Advisory Committee on Racial, Ethnic, and Other Populations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals and organizations to the National Advisory Committee on Racial, Ethnic, and Other Populations. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides committee and membership criteria.

DATES: Please submit nominations by July 15, 2016.

ADDRESSES: Please submit nominations by Email to the *census.national.advisory.committee@census.gov* (subject line "2016 NAC Nominations"), or by letter submission to Kimberly L. Leonard, Committee Liaison Officer, 2016 NAC Nominations, Department of Commerce, U.S. Census Bureau, Room 8H179, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at 301–763–8609.

FOR FURTHER INFORMATION CONTACT: Tara Dunlop, Branch Chief for Advisory

Committees, Customer Liaison Marketing Services Offices, U.S. Census Bureau, Room 8H177, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–5222 or *tara.t.dunlop@census.gov.* For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Racial, Ethnic, and Other Populations ("The Committee") was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code (U.S.C.), Appendix 2). The following provides information about the committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides insight, perspectives, expertise and advice to the Director of the Census Bureau on the full spectrum of Census surveys and programs. The Committee assists the Census Bureau in developing appropriate research/methodological, operational, and communication strategies to reduce program/survey costs, improve coverage and operational efficiency, improve the quality of data collected, protect the public's and business units' privacy and enhance public participation and awareness of Census programs and surveys, and make data products more useful and accessible.

2. The Committee advises on topics such as: Hidden households, language barriers, students and youth, aging populations, American Indian and Alaska Native tribal considerations, new immigrant populations, populations affected by natural disasters, highly mobile and migrant populations, complex households, poverty populations, race/ethnic minorities, rural populations and population segments with limited access to technology. The Committee also advises on data privacy and confidentiality concerns, administrative records, marketing, social media, the dynamic nature of new businesses, minority ownership of businesses, as well as other concerns impacting Census survey design and implementation.

3. The Committee discusses census policies, research and methodology, tests, operations, communications/messaging and other activities and advises regarding best practices to improve censuses, surveys, operations and programs. The Committee's expertise and experiences help identify cost efficient ways to increase participation among hard to count segments of the population as well as ensuring that the Census Bureau's statistical programs are inclusive and continue to provide the Nation with accurate, relevant, and timely statistics.

4. The Committee uses formal advisory committee meetings, webinars, web conferences, working groups, and other methods to accomplish its goals, consistent with the requirements of the Federal Advisory Committee Act (FACA). The Committee will utilize Regional Office participation to help identify regional, local, tribal and grass roots issues, trends and perspectives related to Census Bureau surveys and programs.

5. The Committee functions solely as an advisory body under the FACA.

Membership

1. The Committee will consist of up to 32 members who serve at the discretion of the Director.

2. The Committee aims to have a balanced representation among its members, considering such factors as geography, age, gender, race, ethnicity, technical expertise, community involvement, knowledge of hard to count populations, and familiarity with Census Bureau programs and/or activities.

3. The Committee aims to include members from diverse backgrounds, including state, local and tribal governments, academia, research, national and community-based organizations, and the private sector.

4. Membership shall include individuals, Special Government Employees (SGE), who are selected for their personal expertise with the topics highlighted above and/or representatives of organizations (Representatives) reflecting diverse populations, national, state, local and tribal interests, organizations serving hard to count populations, and community-based organizations. SGEs will be subject to the ethical standards applicable to SGEs. Members will be individually advised of the capacity in which they will serve through their appointment letters.

5. Membership is open to persons who are not seated on other Census Bureau stakeholder entities (*i.e.,* State Data Centers, Census Information Centers, Federal State Cooperative on Populations Estimates program, other Census Advisory Committees, etc.). No employee of the federal government can serve as a member of the Advisory Committee.

6. Generally, members will serve for a three-year term. All members will be reevaluated at the conclusion of each term with the prospect of renewal, pending advisory committee needs. Active attendance and participation in meetings and activities (*e.g.,* conference calls and assignments) will be considered when determining term renewal or membership continuance. Generally, members may be appointed for a second three-year term at the discretion of the Director.

7. Members are selected in accordance with applicable Department of Commerce guidelines.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for committee-related travel and lodging expenses.

2. The Committee meets at least twice a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Officer. All Advisory Committee meetings are open to the public in accordance with the FACA.

Nomination Process

1. Nominations should satisfy the requirements described in the Membership section above.

2. Individuals, groups, and/or organizations may submit nominations on behalf of candidates. A summary of the candidate's qualifications (resumé or curriculum vitae) *must* be included along with the nomination letter. Nominees must be able to actively participate in the tasks of the Advisory Committee, including, but not limited to regular meeting attendance, committee meeting discussant responsibilities, review of materials, as well as participation in conference calls, webinars, working groups, and/or special committee activities.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Advisory Committee membership.

Dated: June 9, 2016.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2016–14167 Filed 6–14–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Scientific Advisory Committee

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals and organizations to the Census Scientific Advisory Committee. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides committee and membership criteria.

DATES: Please submit nominations by July 15, 2016.

ADDRESSES: Please submit nominations by Email to the *census.scientific.advisory.committee@census.gov* (subject line "2016 CSAC Nominations"), or by letter submission to Kimberly L. Leonard, Committee Liaison Officer, 2016 CSAC Nominations, Department of Commerce, U.S. Census Bureau, Room 8H179, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at (301) 763–8609.

FOR FURTHER INFORMATION CONTACT: Tara Dunlop, Branch Chief for Advisory Committees, Customer Liaison Marketing Services Offices, Department of Commerce, U.S. Census Bureau, Room 8H177, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–5222 or *tara.t.dunlop@census.gov*. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Census Scientific Advisory Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code (U.S.C.), Appendix 2). The following provides information about the committee, membership, and the nomination process.

Objectives and Duties

1. The Census Scientific Advisory Committee advises the Director of the U.S. Census Bureau on the uses of scientific developments in statistical data collection, statistical analysis, survey methodology, geospatial analysis, econometrics, cognitive psychology, and computer science as they pertain to the full range of Census Bureau programs and activities (including: Communications, decennial, demographic, economic, field operations, geographic, information technology, and statistics).

2. The Census Scientific Advisory Committee provides scientific and technical expertise from the following disciplines: Demography, economics, geography, psychology, statistics, survey methodology, social and behavioral sciences, Information Technology and computing, marketing, communications, and other fields of expertise, as appropriate, to address Census Bureau program needs and objectives. This expertise is necessary to ensure that the Census Bureau continues to provide relevant and timely statistics used by federal, state, and local governments as well as business and industry in an increasingly technologically-oriented society.

3. The Census Scientific Advisory Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Census Scientific Advisory Committee reports to the Director of the Census Bureau.

Membership

1. The Census Scientific Advisory Committee consists of up to 21 members and one Chair appointed by the Director of the Census Bureau.

2. Members are appointed for a three-year term with staggered term-end dates.

3. Members shall serve as either Special Government Employees (SGEs) or Representatives. SGEs will be subject to the ethical standards applicable to SGEs. Members will be individually advised of the capacity in which they serve through appointment letters. Committee membership will be reevaluated at the conclusion of the three-year term with the prospect of member renewal, active attendance and participation in meetings, administrative compliance, Census Bureau needs, and the Director's concurrence will also be factors in renewals.

4. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Census Scientific Advisory Committee aims to have balanced representation, considering such factors as geography, technical, and scientific expertise. The Advisory Committee will include members from diverse backgrounds, including academia and private enterprise, which are further diversified by business type or industry, geography, and other factors.

5. No employee of the federal government can serve as a member of the Census Scientific Advisory Committee.

Miscellaneous

1. Members of the Census Scientific Advisory Committee serve without compensation, but receive reimbursement for committee-related travel and lodging expenses.

2. The Census Scientific Advisory Committee meets once or twice a year, budget permitting. Additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All Advisory Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees must have scientific and technical expertise in such areas as demography, economics, geography, psychology, statistics, survey methodology, social and behavioral sciences, Information Technology, computing, or marketing. Such knowledge and expertise are needed to provide advice and recommendations to the Director of the Census Bureau on the trends, uses, and application of scientific innovations and developments in relation to the full range of Census Bureau programs and activities.

3. Individuals, groups, and/or organizations may submit nominations on behalf of individual candidates. A summary of the candidate's qualifications (resumé or curriculum vitae) must be included along with the nomination letter. Nominees must be able to actively participate in the tasks of the Census Scientific Advisory Committee, including, but not limited to, regular meeting attendance, committee meeting discussant responsibilities, review of materials, as well as participation in conference calls, webinars, working groups, and/or special committee activities.

4. Nominations of organizations may come from individuals or organizations. Organizations also may self-nominate. A summary of the organization's qualifications and the experience that qualifies it for membership should be included in the nomination letter. Nominated organizations must be able to actively participate in the tasks of the Census Scientific Advisory Committee, including, but not limited to, regular meeting attendance, review of materials, and participation in conference calls, webinars, working groups, and special committee activities.

5. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Advisory Committee membership.

Dated: June 9, 2016.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2016–14185 Filed 6–14–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE682

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The NMFS Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, has made a preliminary determination that an exempted fishing permit application contains all of the required information and warrants further consideration. This exempted fishing permit would allow commercial fishing vessels in collaboration with the Commonwealth of Massachusetts Division of Marine Fisheries to research the use of raised-footrope trawl gear to target whiting (Northern silver hake) within two existing areas of the Gulf of Maine whiting exempted fishery before the start of these areas current open seasons.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for a proposed exempted fishing permit.

DATES: Comments must be received on or before June 30, 2016.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line "Comments on 2016 MADMF Whiting Exempted Fishery Study EFP."
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "2016 MADMF Whiting Exempted Fishery Study EFP."

FOR FURTHER INFORMATION CONTACT: Reid Lichwell, Fishery Management Specialist, (978) 282–9112.

SUPPLEMENTARY INFORMATION: The Commonwealth of Massachusetts Division of Marine Fisheries (MADMF) submitted a complete application for an Exempted Fishing Permit (EFP) to assess the use of small-mesh raised-footrope trawl gear to target whiting within two Gulf of Maine (GOM) whiting exempted fishing areas 2 weeks before each area currently opens for whiting fishing. Research would occur in subareas of Small Mesh Area I (SMA1) and the Western Raised Footrope Exemption Area (Western RFEA). This EFP would allow participating commercial fishing vessels exemption from the minimum mesh size gear requirements found at 50 CFR 648.80(a)(3); and from the possession limits and minimum size requirements specified in 50 CFR part 648, subparts B and D through O.

MADMF asserts that the GOM whiting exempted fishery is underutilized and analysis of observer data have indicated that whiting stocks may be more prevalent and more effectively targeted within the exemption areas before the current July 15 opening for SMA1 and before the September 1 opening for the Western RFEA. This study would provide data on catch rates of whiting and bycatch rates of regulated Northeast (NE) multispecies to evaluate an earlier opening of the GOM whiting exempted fishery. Funds from the Massachusetts Groundfish Disaster Economic Assistance Program will be used to support this project.

This EFP would allow five vessels to conduct research fishing within the western portion of SMA1 during July 1–14, and four vessels within the western half of the Western RFEA area during August 18–31, as defined within the scientific research plan. Participating vessels would be limited to 6 fishing days each, to be fished within their assigned areas, totaling 54 fishing days for the entire project. The length of each trip would be at the discretion of the vessel operators, consistent with normal commercial fishing practices. Each vessel would conduct approximately 3 to 4 tows per-day, with a tow speed of 2.5-knots and each tow lasting approximately 90 minutes.

Participating vessels will use a raised-footrope trawl with 2.5 or 3-inch diamond mesh nets consistent with the whiting exemption requirements found at 50 CFR 648.80(a)(9)(ii). These vessels would operate under the restrictions associated with the whiting exemption areas during their open seasons. For instance, vessels would be allowed to retain whiting and offshore hake with a possession limit of up to 7,500 lb (3,402 kg) per trip, and red hake with a possession limit of up to 3,000 lb (1,361 kg) per trip. Additional species permitted for retention and sale would include butterfish, spiny dogfish, Atlantic herring, Atlantic mackerel, scup, and squid. Regulated multispecies (cod, haddock, etc.) cannot be retained by the participating vessels. Participating vessels would be exempt from the possession limits and minimum size requirements while collecting weight and length measurements of catch. All catch, including bycatch, not retained for sale would be returned to the sea as soon as possible after biological sampling is conducted.

MADMF has analyzed catch data collected from 2010 through 2015 on vessels using small-mesh trawls within the same geographic area during adjacent timeframes to determine the predicted average catch and bycatch rates of each species per tow. This analysis suggests tows conducted under this research would result in low bycatch of regulated NE multispecies. The proposed EFP would provide relatively low fishing effort occurring over a short timeframe. In addition, due to the relatively small amount of whiting that will be harvested under this EFP, it is not anticipated that this project will reduce any small mesh sub-ACL to the extent that it would negatively impact other small mesh vessels that are not involved in this project.

All trips will be accompanied by either MADMF trained staff or contracted observers to collect data on catch composition, length and weight measurements, and operational data (location, weather, time, duration of tow, trawl speed, etc.) as described within the scientific research plan. All gear will be inspected and measured prior to its use to verify that it meets the mesh sizes requirements and raised-footrope specifications proposed for use in this project and consistent with existing applicable small-mesh exempted gear requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 10, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–14160 Filed 6–14–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Technical Information Service

[Docket No.: 160608001–5001–01]

Opportunity To Enter Into a Joint Venture With the National Technical Information Service for Data Innovation Support

AGENCY: National Technical Information Service, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Technical Information Service (NTIS) requests

proposals from interested for-profit, non-profit, or research performing service organizations to enter into a Joint Venture Partnership with NTIS to assist Federal agencies to develop and implement innovative ways to collect, connect, access, analyze, or use Federal data and data services.

DATES: Proposals are due on or before 11:59 p.m. Eastern Time on August 1, 2016. An informational session and webinar is scheduled at 9:00 a.m. Eastern Time on Thursday, July 7, 2016.

ADDRESSES: Proposers must submit their written submissions electronically with the subject line "Opportunity to Enter into a Joint Venture Partnership with the National Technical Information Service for Data Innovation Support" via email to *OpportunityAnnouncement@ntis.gov* with an email copy to Kenyetta Haywood at *khaywood@ntis.gov*. If you plan to participate in the informational session and webinar, send an email to *OpportunityAnnouncement@ntis.gov*, subject line: "Informational Session and Webinar Attendance Request for the Opportunity to Enter into a JVP with NTIS." NTIS will provide registration information by email together with information on location and site access for those planning to attend in person. The venue for the in-person informational session will be either in Washington DC or at NTIS offices in Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Don Hagen at 703–605–6142, or by email at *dhagen@ntis.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction/Background

NTIS, an agency of the U.S. Department of Commerce, is seeking proposals from potential joint venture partners (JVPs) that can work with NTIS to assist Federal agencies to improve access, data interoperability, search, or use of Federal data and data services to drive innovation and business outcome. Activities conducted by joint ventures may include: (1) Designing, testing, analyzing, or demonstrating the application of Federal data and data services, either alone or in combination with non-Federal data; (2) leveraging the private sector's knowledge and expertise in managing data and data sets, including data collection by the Federal government; (3) facilitating the creation, based on Federal data or the use of Federal data in some combination with non-Federal data, of suites of products, platforms, and services that meet the needs of businesses, innovators, government agencies, and others; or (4) otherwise enhancing data discovery and usability, data interoperability and standards, data analytics and forecasting, or data infrastructure and security. These activities support several federal priorities for the Data Economy such as Big Data, Open Data, Open Access, Cyber-Physical Systems, Smart Cities, and Internet-of-Things.

The business opportunities described in this notice are joint ventures, which require investments by partners and may provide a revenue-sharing opportunity. NTIS has statutory authority to operate as a permanent clearinghouse of scientific, technical, and engineering information and to collect and disseminate such information, codified in chapter 23 of title 15 of the United States Code (15 U.S.C. 1151–1157), specifically 15 U.S.C. 1152. Section 1153 of this chapter provides NTIS' authority to charge fees for its products and services and to recover all costs through such fees "to the fullest extent feasible."

The authority was restated and expanded in the National Technical Information Act of 1988, codified at 15 U.S.C. 3704b. This act gave NTIS the authority to enter into joint ventures and declared the clearinghouse to be a permanent federal function that could not be eliminated or privatized without Congressional approval.

The National Technical Information Act of 1988 was amended by the American Technology Preeminence Act of 1991 (Pub. L. 102–245), which directed NTIS to focus on developing new electronic methods and media for information dissemination.

In addition, following a rigorous review of NTIS mission and operations, the Secretary of Commerce set a new strategic direction for NTIS in May 2015 that will meet a 21st Century national need: To promote the Commerce Department's and Federal data priorities, including Open Access and Open Data.

The new strategic direction for NTIS is aligned with the Commerce Department's Data Goal, which is one of five goals in the Department's Strategic Plan. The Department collects, stores, and analyzes a wealth of information, including data on the Nation's economy, population, and environment. These data are at the core of the Department's mission, and are used to protect life and property and to grow the economy. Businesses use the Department's data to make investment and hiring decisions. State and local governments mine the Department's data to warn of coming danger, position first-responders, and construct high-tech classrooms. The Federal Government uses the Department's data to allocate funds and to make critical decisions on fiscal and monetary policy. As "America's Data Agency,"[1] the Department of Commerce is using its data to spur innovation inside and outside the Federal Government and promote greater prosperity across the country.

The potential economic value of Federal Government data is significant. In a 2014 report,[2] the Department of Commerce's Economics and Statistics Administration estimated that Federal Government data have the potential to guide up to $3.3 trillion in investments in the United States annually. The report estimated that the Decennial Census and American Community Survey data alone guide $400 billion in federal spending annually. The report also states that 28 Federal Government programs which distribute more than $300 billion annually use regional income and product estimates from the Bureau of Economic Analysis, derived from Department data. Further the report finds that government data-intensive private firms generate annual revenues with an upper estimate as high as $221 billion.

There are different data types, standards, methodologies, Web sites, architectures, platforms, and formats that make it difficult to access, analyze, and use data. Few people know the extent of Commerce's or other Federal Government data sets, and even fewer know how to build innovative, useful tools from them. Partnering with the private sector will allow NTIS to leverage industry knowledge and expertise in delivering data to end users. Joint venture partnerships will also increase the capacity of NTIS to develop and disseminate data in common standards and architectures that will make it easier for the public to access, analyze, and use the data, either alone or in combination with non-Federal data.

It is at the intersection between the Federal agencies and the private sector where NTIS will deliver exceptional value by serving as a center of excellence in meeting a 21st Century national need. NTIS may enter into Joint Ventures to enable partnerships involving the Commerce Department or its Bureaus, or other Federal agencies.

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[1] America is Open for Business, Strategic Plan FY 2014–2018, Version 1.1, U.S. Department of Commerce, 2015. (*https://www.commerce.gov/sites/commerce.gov/files/media/files/2014/doc_fy2014-2018_strategic_plan.pdf*).

[2] Fostering Innovation, Creating Jobs, Driving Better Decisions: *The Value of Government Data*, U.S. Department of Commerce, Economics and Statistics Administration, July 2014. (*http://esa.gov/sites/default/files/revisedfosteringinnovationcreatingjobsdrivingbetterdecisions-thevalueofgovernmentdata.pdf*.)

Specifically, NTIS will accelerate (1) private sector use of government data, either alone or in combination with non-Federal data, to develop and use new and improved data products and services, and (2) government use of data to improve the effectiveness and efficiency of programs. NTIS will remain a self-supporting agency without federal appropriations that recovers its operating costs from fees and the use of the NTIS Revolving Fund. 15 U.S.C. 1153 and 3704b note.

II. General Scope

Technical Requirements

Proposals must address at least one of the following areas of innovation. The proposer must explicitly state in the proposal which area(s) are addressed.

1. *Providing innovations in the use of data and data services.* The proposal must include a description of how the proposer would contribute innovations in the use of data and data services and the resources, such as staff, partnerships, contracts, other technologies, they would use to achieve these innovations. The proposal should also provide examples of prior instances of similar innovative work conducted by the proposer. The scope of this area includes data science and engineering innovations associated with (a) making it easier to use data, and (b) combining, analyzing and using data, either alone or in combination with non-Federal data, in new ways, and (c) data infrastructure and security such as advancements for data inventories, data capture, cloud-based data solutions, cybersecurity, and assistive technologies.

2. *Providing new, more effective and/or efficient methods for sharing data.* The proposal must include a description of how the proposer would improve data sharing and provide examples where applicable. The proposal must include a description of the resources, such as staff, partnerships, contracts, and other technologies, the proposer would use to achieve these innovations. The scope of this area includes data science and engineering innovations associated with (a) data discovery and usability such as search engine optimization, interactive visualization and query management, and user analytics, (b) data interoperability and standards such as data cleansing, metadata practices, application programming interfaces, and developer platforms, and (c) simplifying and streamlining delivery of data services.

3. *Advancing ways to analyze, interpret, and understand data as well as apply it in meaningful ways.* The proposal must describe how the proposer would use technologies, processes and techniques to improve the analysis, interpretation, understanding, and application of data and provide examples where applicable. The proposal must include a description of the resources, such as staff, partnerships, contracts, and other technologies, the proposer would use to achieve these innovations. The scope of this area includes data science and engineering innovations associated with data analytics and forecasting such as data visualization, geospatial analysis, comparative and predictive analytics, and statistical methods.

4. *Developing technologies, techniques, and processes that can lead to deep understanding from and new insights into data.* The proposal must include a description of how the proposer would significantly improve the value of data, how such deep understanding and new insights may be applied and the potential benefits and impacts of these innovations. The proposal must include a description of the resources, such as staff, partnerships, subcontracts, and other technologies, the proposer would use to achieve these innovations. The scope of this area includes data science and engineering innovations associated with data analytics and forecasting such as machine learning, cognitive analytics, artificial intelligence, and other computer science advancements. The proposal may focus on data from the Federal Government alone, or in combination with non-Federal data.

NTIS pursues joint ventures as a means of improving access to, or analysis, collection, or use of Federal data and data services, either alone or in combination with non-Federal data, that can be best developed and delivered through the combined resources of NTIS and one or more joint venture partners. The NTIS joint venture program is focused on (1) making it easier to collect, access, analyze, and use data; (2) combining and using data in new ways; (3) leveraging advances in data science, software development, and standards; and (4) simplifying and streamlining delivery of data services. NTIS joint venture projects involve innovation, speedy execution, and one or more of the following attributes: (a) First or early use of emerging technology, (b) complexity of solution architecture, interoperability, and/or security; (c) agile applications development and systems operations which require adaptive scoping; and/or (d) custom solutions to meet unique requirements without commercial-off-the-shelf solutions.

The NTIS joint venture partnership program enables NTIS to structure joint venture partnership agreements and Federal agency agreements that offer the best combination of speed and performance for delivering innovative data services or systems. NTIS manages joint venture projects in a highly flexible, interactive, and collaborative manner with its customer Federal agencies and joint venture partners.

As NTIS operates on a cost-recovery basis, proposals should address proposed business terms for revenue sharing between NTIS and the proposed joint venture partner. Proposals should demonstrate the benefits of collaboration between the proposed joint venture partner and NTIS.

Joint ventures are not procurements and do not result in contracts under the Federal Acquisition Regulation (FAR). Joint ventures involve the investment of resources by NTIS and its partners, with a formal agreement for the sharing of resources associated within the venture. Both the joint venture partner and NTIS will share opportunities for potential returns in the form of revenue from projects with other Federal agencies. NTIS envisions separate joint venture partnership(s) with multiple organizations. The joint venture partnership(s) will provide data services that allow customer federal agencies to further their missions rapidly in innovative and creative ways by enabling businesses, government agencies, and the public to access, analyze, collect, synthesize, disseminate, or use data.

NTIS will provide data services that support the development of solutions with its joint venture partners. NTIS will also provide technical guidance and oversight for joint venture partnerships.

NTIS will enter into joint venture agreements in accordance with all relevant provisions of applicable federal laws. Any proposal that has the appearance of circumventing FAR or other agency acquisition requirements will be determined to be non-responsive to this Opportunity Announcement during the initial phase of the selection process and will not be considered further.

Proposers must acknowledge and address the following in their proposals:

- Data received from a Federal agency and from non-Federal organizations as part of a project performed by NTIS with a joint venture partner may only be accessed and utilized for project purposes consistent with all applicable statutory and regulatory protections and all relevant agreements.

- Federal agencies and private sector organizations that provide data as part of a project performed by NTIS with a joint venture partner will retain ownership of the data rights. Federal agencies and private sector organizations may be requested to provide licenses to use the data for the purposes of a project.
- Systems, programs and applications included in the proposal must comply with the documented security assessment and authorization (A&A) policies issued by the Office of Management and Budget (OMB), standards and guidance issued by National Institute of Standards and Technology (NIST), and the Federal Information Security Management Act of 2002 (FISMA) before the systems, programs and applications are offered to Federal agencies under a joint venture partnership.
- Proposers must have the ability to accept electronic fund transfers.
- NTIS will not guarantee that any revenue will be generated for the joint venture partner merely by entering into a joint venture partnership with NTIS.
- Proposers must have the ability to fund their portion of any projects commenced pursuant to a joint venture partnership agreement for a period of time, which may differ on individual projects, due to federal accrual accounting practices. NTIS does not allow (and has never offered) financial incentives in entering into joint venture partnership agreements. NTIS will not provide advance payments to joint venture partners.

III. Requested Response

NTIS seeks to enter into joint venture partnerships with one or more partners to assist Federal agencies further their missions in innovative and creative ways by enabling businesses, government agencies, and the public with improved access to, or analysis, collection, or use of Federal data and data services, either alone or in combination with non-Federal data. NTIS provides data services for speedy execution of innovative projects, typically involving one or more of the following attributes: (a) First or early use of emerging technology; (b) complexity of solution architecture, interoperability, and/or security; (c) agile applications development and systems operations which require adaptive scoping; or (d) custom solutions to meet unique requirements without commercial-off-the-shelf solutions.

Proposers are encouraged to include proposed teams of more than one private sector organization, including small and medium enterprises and start-ups. Proposals should describe any proposed teaming arrangements, including the relationships among the parties, how the team would function, and how the team may be augmented to fill missing capabilities. NTIS will evaluate each proposal and may solicit oral presentations from some or all proposers. Upon entering into a JVP agreement, NTIS expects the proposed services to be available solely to Federal agencies and only through agreements between NTIS and the customer Federal agencies.

Proposal Submission Information

a. The proposal is a word-processed document of no more than thirty (30) double-spaced pages responsive to the evaluation criteria set forth below. Any pages submitted beyond the 30-page limit will not be considered. Each proposal page layout should be 8.5 inches by 11 inches with 1-inch margins. The font for the proposal should be Times New Roman 12 point or similar font in readable size (no less than 10 point). All submissions must be made in electronic format and submitted to *OpportunityAnnouncement@ntis.gov* with a copy to Kenyetta Haywood at *khaywood@ntis.gov.* All proposals are subject to the False Claims Act, 31 U.S.C. 3729 and 18 U.S.C. 287, as well as the False Statements Act, 18 U.S.C. 1001. In accordance with Federal appropriations law, an authorized representative of the selected proposer(s) may be required to provide certain certifications regarding federal felony and federal criminal tax convictions, unpaid federal tax assessments, and delinquent federal tax returns.

Proposal Technical, Administrative and Business Information

The proposal must address each of the evaluation criteria set forth in the following section and should include all of the information set forth in this section. Each section of the proposal should include a brief title or description of its content.

(1) The proposal must include a technical plan that identifies and describes the technical capabilities of the proposed joint venture partner and its team. The proposal must include (a) a description of technical capabilities in each area of data innovation that the joint venture partner and its team will address, (b) examples of up to three major projects where the proposed joint venture partner and, where applicable, its team have demonstrated data innovations using the technical capabilities; if the joint venture partner and, where applicable, its team, have not conducted projects in which they have demonstrated data innovations using the technical capabilities, they should include instead a description of how they would go about doing so, and (c) a description of the professional accomplishments, skills, certifications, and training of the personnel proposed to provide the technical capabilities and perform the work proposed in the proposal, including each individual whose innovative technical capabilities are critical to the development or execution of joint venture projects in a substantive and measurable way. This information will be considered against evaluation criteria 1, 2 and 3 below.

(2) The proposal must include a business plan that identifies and describes how services may be offered through NTIS via a joint venture partnership. The proposal must include a short description of how the proposer and NTIS could jointly develop and deliver the proposed technical capabilities to Federal agency customers. The proposal also must address why and how the proposed capabilities will result in innovative data applications, data delivery, or data collection based on advances in data science, engineering, or best practices. This information will be considered against evaluation criteria 1, 2 and 4 below.

(3) The proposal may include any other information that the proposer thinks will assist reviewers in their evaluation of the proposal against the evaluation criteria described below.

To the extent permitted by law, including the Freedom of Information Act (FOIA), 5 U.S.C. 552, NTIS will not disclose confidential or proprietary information provided and clearly marked in any proposal submitted in response to this notice without providing the organization that submitted such information the opportunity to object to the potential release of the information. If NTIS receives a request for disclosure of confidential information, it will promptly notify the submitting organization in writing and give it an opportunity to demonstrate that NTIS should withhold the information in accordance with Department of Commerce FOIA regulations (15 CFR part 4).

Evaluation Criteria

The evaluation criteria for the proposals are as follows:

(1) Rationality (0–25 Points)

The logic and soundness of the proposer's approach to provide innovations that are relevant to NTIS and other Federal agencies in one or more of the following areas: (a) Using data and data services; (b) sharing and enhancing the usability of data and data services; (c) advancing the analysis and interpretation of data; and (d) developing deep understanding from and new insights into data.

(2) Technical Merit of Contribution (0–35 Points)

The potential technical effectiveness of the proposed capabilities and work and the value it would contribute to the fields of data science, engineering, or best practices relevant to NTIS as described in the General Scope section of this announcement.

(3) Qualifications of Technical Personnel (0–25 Points)

The professional accomplishments, skills, certifications, and training of the personnel proposed to provide the technical capabilities and perform the work proposed in the proposal, including all individuals whose innovative technical capabilities are critical to the development or execution of joint venture projects in a substantive and measurable way as identified in the proposal.

(4) Resources Availability (0–15 Points)

The extent to which the proposer has access to the necessary equipment, tools, and facilities and overall support and resources to accomplish proposed objectives and work jointly with NTIS to accomplish project goals.

Evaluation and Selection Process

All proposals received by the due date set forth in the **DATES** section of this notice will be reviewed to determine whether they are submitted by a for-profit, non-profit, or research performing service organization (eligible), contain all required technical, business and administrative information (complete), and are responsive to this Opportunity Announcement. Proposals determined to be ineligible, incomplete, and/or non-responsive based on the initial screening will be eliminated from further review. However, NTIS, in its sole discretion, may continue the review process for a proposal that is missing non-substantive information that can easily be rectified or cured.

All proposals that are determined to be eligible, complete, and responsive will proceed for full reviews in accordance with the review and selection process set forth below. At least three (3) objective individuals knowledgeable about the particular technical areas described in the proposal will review the merits of each proposal based on the evaluation criteria. The reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus. NTIS may solicit oral presentations from some or all proposers.

The Selecting Official, who is the NTIS Deputy Director or designee, in consultation with the NTIS Director and the NTIS Oversight Board, will make final proposal selections, taking into consideration the results of the reviewers' evaluations, relevance to the scope and objectives described in this Opportunity Announcement, the distribution of proposals across technical areas, and the distribution of proposers among large, medium and small organizations. The NTIS Oversight Board is a group of senior Department of Commerce executives, appointed by the Under Secretary of Commerce for Standards and Technology, to guide the evolution of NTIS toward a focus on the Department of Commerce's data mission and transition away from services not aligned with the Department's and/or Federal data priorities. For proposals from international organizations, NIST will follow applicable U.S. laws and policies.

Notification of Results

Unsuccessful proposers will be notified in writing. Proposers whose proposals are selected will be notified and will be provided with the standard NTIS Joint Venture Partnership agreement for execution. Each Joint Venture Partnership agreement entered into between a selected proposer and NTIS will incorporate the selected proposer's proposal by reference. NTIS will not be responsible for any costs incurred by any proposer prior to execution of a Joint Venture Partnership agreement.

Dated: June 9, 2016.

Gregory Capella,

Deputy Director, National Technical Information Service.

[FR Doc. 2016–14175 Filed 6–14–16; 8:45 am]

BILLING CODE 3510–04–P

COUNCIL ON ENVIRONMENTAL QUALITY

Office of Federal Sustainability Employee Charging Guidance

AGENCY: Council on Environmental Quality.

ACTION: Notice of availability, *Guidance for Federal Agency Implementation of Workplace Charging Pursuant to the Fixing America's Surface Transportation (FAST) Act: Level 1 Charging Receptacles.*

SUMMARY: The Office of Federal Sustainability Council on Environmental Quality (CEQ) has issued to Federal agency Chief Sustainability Officers *Guidance for Federal Agency Implementation of Workplace Charging Pursuant to the Fixing America's Surface Transportation (FAST) Act: Level 1 Charging Receptacles.* The guidance outlines how Federal agencies can take advantage of workplace charging opportunities under the FAST Act, and provides an approach for a uniform fee for Level 1 charging receptacles (*i.e.* wall outlets) for the purposes of seeking reimbursement under the FAST Act. The document also describes how Federal agency Chief Sustainability Officers should coordinate with Federal agency fleet managers to report annually on the implementation of workplace charging in the Federal Automotive Statistical Tool (FAST).

DATES: The guidance is effective June 15, 2016.

ADDRESSES: The *Guidance for Federal Agency Implementation of Workplace Charging Pursuant to the Fixing America's Surface Transportation (FAST) Act: Level 1 Charging Receptacles* is available at: *https://www.whitehouse.gov/administration/eop/ceq/initiatives/sustainability.*

FOR FURTHER INFORMATION CONTACT: Amy Porter, Office of Federal Sustainability, at *Amy_F_Porter@ceq.eop.gov* or (202) 456–6224.

SUPPLEMENTARY INFORMATION: This guidance document applies only to Federal agency buildings not under the jurisdiction, custody, or control of the General Services Administration. Agencies are expected to follow the *Guidance for Federal Agency Implementation of Workplace Charging Pursuant to the Fixing America's Surface Transportation (FAST) Act: Level 1 Charging Receptacles* as part of their compliance with E.O. 13693.

Authority: E.O. 13693, 80 FR 15871.

Dated: June 9, 2016.

Christine Harada,

Federal Chief Sustainability Officer, Council on Environmental Quality.

[FR Doc. 2016–14144 Filed 6–14–16; 8:45 am]

BILLING CODE 3225–F6–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Update to Notice of Intent to the Joint Environmental Impact Statement and Environmental Impact Report for Development of the Oro Verde Solar Project

AGENCY: United States Air Force, DOD.

ACTION: Updated Notice of Intent.

SUMMARY: The United States Air Force (USAF) is issuing this notice to update the public on changes to the joint Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) for development of the Oro Verde Solar Project (OVSP). The Notice of Intent (NOI) to prepare a joint project-level EIS/EIR for the Oro Verde Solar Project was originally published in the **Federal Register** on May 29, 2013 (FR Doc. 2013–12751). Public and agency meetings were held to discuss the project on June 11, 2013, at Club Muroc on Edwards AFB; June 12, 2013, at the Mojave Veterans Hall at 15580 O Street in Mojave, California; and June 13, 2013, at the Hummel Community Hall at 2500 20th Street West in Rosamond, California. Since the publication of the NOI, the Air Force is no longer partnering with the originally selected project developer for the Oro Verde Solar Project. However, the Air Force is continuing with completion of an EIS/EIR at a broader programmatic level to support future project implementation. The Air Force has retitled this project the Edwards AFB Solar EUL Project Programmatic EIS/EIR. The programmatic analysis will provide future potential developers and the public with an early understanding of environmental impacts and benefits of the proposed action, and will assist in framing the scope of any subsequent site-specific Air Force actions.

ADDRESSES: In order to update the public on changes to the programmatic EIS/EIR proposal and effectively define the full range of issues to be evaluated, the Air Force and Kern County are soliciting additional comments from interested state and federal agencies and interested members of the public. The Air Force and Kern County request comments be sent within 30 days following the publication of this Notice of Intent in the **Federal Register**. Comments and input from the public on the proposal for the Edwards AFB solar EUL project can be emailed or sent to Edwards AFB public affairs using the following contact information. Gary Hatch, Environmental Public Affairs, Bldg. 1405, Room 400, Edwards Air Force Base, CA 93524; email: *412tw.pae@edwards.af.mil,* Phone: 661–277–8707, Fax: (661) 277–2732.

SUPPLEMENTARY INFORMATION: The programmatic EIS/EIR will provide the information needed by the Air Force and County to make a determination on whether or not to implement a solar photovoltaic (PV) project on up to a maximum of 4,000 acres of undeveloped, non-excess real property in the northwest corner of Edwards AFB. The analysis will also evaluate the environmental impacts associated with construction of a generation transmission tie (gen-tie) line that is anticipated to be 10–14 miles in length. Final routing would depend on the ability of a future developer to secure access easements from public and private entities. The project area is located approximately 6 miles northeast of the community of Rosamond and 6 miles south of Mojave in southeastern Kern County, California. The proposal and alternatives being evaluated in the Edwards AFB Solar EUL Project Programmatic EIS/EIR have remained consistent with those presented in the 2013 Notice of Intent and Scoping sessions, though the Air Force is now considering a 1,500 acre development instead of a 2,000 acre development for its reduced-scale project alternative (Alternative B). The area proposed for solar PV development is the same area presented in 2013.

Alternatives evaluated in the Edwards AFB Solar EUL Project Programmatic EIS/EIR include the No Action Alternative and two additional alternatives. Alternative A includes development of a solar PV project on up to 4,000 acres of Edwards AFB property located in the northwestern corner of the base and would include construction of a Gen-tie line of approximately 10–14 miles in total length. Alternative B represents a reduced-scale alternative for the construction and operation of a solar PV facility on up to 1,500 acres of Edwards AFB non-excess property within the same project footprint as Alternative A. The Air Force anticipates issuing a Request for Qualifications (RFQ), requesting proposals from public and/or private entities to construct, operate, and maintain a utility-scale solar PV energy-generating facility. The future selected developer/s would complete additional site-specific environmental impact analysis tiering from the Edwards AFB Solar EUL Project Programmatic EIS/EIR to address any facility design issues requiring additional analysis.

Public scoping for the Edwards AFB Solar EUL project was conducted for 30 days following the May 29, 2013 publication of the Notice of Intent for the joint project-level EIS/EIR for the Oro Verde Solar Project. Public scoping meetings were held in June, 2013 in conjunction with the scoping period for this project.

The USAF has identified potential impacts to the following resources: Aesthetics, Air Quality and Greenhouse Gas Emissions, Biological Resources, Cultural and Paleontological Resources, Water Resources, Land Use, Public Services, Soils, Transportation and the Acoustic Environment. Additionally, Pursuant to Executive Order 11988, as amended by Executive Order 13690, the Air Force is providing early notification that the project area is located within a floodplain that would be impacted by the proposed solar development.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2016–14125 Filed 6–14–16; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0022]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army proposes to alter a system of records notice A0621–1 DASG, entitled "Long-Term Civilian Training Student Control Files." The purpose of this system is the initiation and maintenance of contracts between the Army and civilian academic institutions for the purpose of sending Army Medical Department officers for long-term civilian training on a partially or fully funded program.

DATES: Comments will be accepted on or before July 15, 2016. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management

Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3827 or by calling (703) 428–7499.

SUPPLEMENTARY INFORMATION: The Department of the Army's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.* The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on May 17, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," revised November 28, 2000 (December 12, 2000, 65 FR 77677).

Dated: June 10, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0621–1 DASG

SYSTEM NAME:

Long-Term Civilian Training Student Control Files (April 4, 2003, 68 FR 16484).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Center for Professional Education and Training (CPET), 2450 Stanley Road, Bldg. 146, Suite 204, Joint Base San Antonio, TX 78234–7510."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "All Army Medical Department Active Duty personnel currently participating in long-term civilian training on a partially or fully funded basis."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Individual's information, including: Name, date of birth, Social Security Number (SSN), home address, home and office telephone number, work email address, rank, security clearance, education level, grade, duty position, and orders. Course administrative data level: Name of school (city and state), official title of degree student expects to receive, date degree is expected, department and major field of study, subjects studied and grades received, academic plan, name and contact information of faculty advisor, absences which may impact course completion, academic difficulties and reasons for these difficulties, changes in academic plan, and course training requirements.

Financial data, including: Name of individual's bank, routing number, bank account number, bank address, and dollar amount of requested reimbursement funds."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 3013, Secretary of the Army; DoD Instruction 6000.13, Medical Manpower and Personnel; Army Regulation 351–3, Professional Education and Training Programs of The Army Medical Department; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "Initiation and maintenance of contracts between the Army and civilian academic institutions for the purpose of sending Army Medical Department officers for long-term civilian training on a partially or fully funded program."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of systems of records notices may apply to this system. The complete list of DoD blanket routine uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx*".

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Electronic storage media and paper records."

RETRIEVABILITY:

Delete entry and replace with "Individual's first and last name, rank, and academic program."

SAFEGUARDS:

Delete entry and replace with "Paper records are maintained in lockable file cabinets. Access to computerized data is restricted by use of CACs and is accessible only by users with an authorized account. The system and electronic backups are maintained in controlled facilities that employ physical restrictions and safeguards to include security guards, identification badges, key cards, and locks."

RETENTION AND DISPOSAL:

Delete entry and replace with "The hardcopy of the paper files are destroyed by shredding when a student completes the training. The student's electronic academic file is maintained for two years."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Chief, Center for Professional Education and Training, 2450 Stanley Road, Bldg. 146, Suite 204, Joint Base San Antonio, TX 78234–7510."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to: Chief, Education Branch, U.S. Army Medical Department Center and School (AMEDDC&S), Center for Professional Education and Training, 2450 Stanley Road, Bldg. 146, Suite 204, Joint Base San Antonio, TX 78234–7510.

The individual should provide the full names, SSN, current address, current unit of assignment (if on active duty), sponsoring program and calendar years in training, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' "

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the: Chief, Education Branch, U.S. Army Medical Department Center and School (AMEDDC&S), Center for Professional Education and Training, 2450 Stanley Road, Bldg. 146, Suite 204, Joint Base San Antonio, TX 78234–7510.

The individual should provide the full names, SSN, current address, current unit of assignment (if on active duty), sponsoring program and calendar years in training, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' "

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Army's rules for accessing records, contesting contents, or appealing initial agency determinations are contained in 32 CFR part 505, Army Privacy Program, or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "From the individual, Army records and reports, correspondence with the selecting academic institution."

* * * * *

[FR Doc. 2016–14155 Filed 6–14–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0064]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of records, DMDC 24 DoD, entitled "Defense Information System for Security (DISS)." The Office of the Secretary of Defense proposes to establish a new system of records to serve as the Department of Defense enterprise-wide information system for personnel security, providing a common, comprehensive medium to request, record, document, and identify personnel security actions within the Department including: Determinations of eligibility and access to classified information, national security, suitability and/or fitness for employment, and HSPD–12 determination for Personal Identity Verification (PIV) to access government facilities and systems, submitting adverse information, verification of investigation and/or adjudicative status, support of continuous evaluation and insider threat, prevention, and mitigation activities.

DISS consists of two applications, the Case Adjudication Tracking system (CATS) and the Joint Verification System (JVS). CATS is used by the DoD Adjudicative Community for the purpose of recording eligibility determinations. JVS is used by DoD Security Managers and Industry Facility Security Officers for the purpose of verifying eligibility, recording access determinations, submitting incidents for subsequent adjudication, and visit requests from the field (worldwide). These records may also be used as a management tool for statistical analyses, tracking, reporting, evaluating program effectiveness, and conducting research.

DATES: Comments will be accepted on or before July 15, 2016. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPD2), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpcld.defense.gov/*. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 19, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 24, 2016

Aaron Siegel,

Alternate OSD Ferderal

DMDC 24 DoD

SYSTEM NAME:

Defense Information System for Security (DISS)

SYSTEM LOCATION:

Defense Manpower Data Center (DMDC), DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Armed Forces personnel; DoD and U.S. Coast Guard civilian personnel, contractor employees, and applicants; other federal personnel with authorized access to DISS or for reciprocity purposes; "affiliated" personnel (*e.g.,* Non-Appropriated Fund employees, Red Cross volunteers and staff, USO personnel, and congressional staff members); industry personnel requiring DISS access for personnel security purposes; and individuals with access to National Security Information (NSI), Sensitive Compartmented Information and/or assignment to a sensitive position.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name (current, former and alternate names); Social Security Number (SSN); DoD Identification Number (DoD ID); date of birth; place of birth; gender; marital status; personal cell and home telephone number; personal email address; country of citizenship; type of DoD affiliation; employing activity; current employment status; photo; position sensitivity; personnel security investigative basis; status of current adjudicative action; security clearance eligibility status and access status; suitability and/or fitness determination for employment eligibility status, HSPD–12 determination for Personnel Identity Verification (PIV) eligibility status; whether eligibility determination was based on a condition (personal, medical, or financial), deviation or waiver of prescribed investigative standards or adjudication guidelines; security-related incident reports, to include issue files and information identified through continuous evaluation which may require additional investigation or adjudication; foreign travel and foreign contacts; self-reported information; eligibility recommendations or decisions made by an appellate authority, Department of Hearings and Appeals (DOHA), and/or Component Personnel Security Appeals Boards for due process; non-disclosure execution dates; indoctrination date(s); level(s) of access granted; and debriefing date(s) and reasons for debriefing. Records documenting investigation status, adjudications, and outcomes conducted by Federal investigative organizations (*e.g.,* U.S. Office of Personnel Management (OPM), Central Intelligence Agency, etc.) or DoD agencies; Continuous Evaluation flags and/or locator references to such investigations. Investigative file is available to adjudicators only.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 9101, Access to Criminal History Records for National Security and Other Purposes; 10 U.S.C. 137, Under Secretary of Defense for Intelligence; E.O. 12333, United States Intelligence Activities; E.O. 12829, National Industrial Security Program; E.O. 10450, Security Requirements for Government Employment; E.O. 10865, Safeguarding Classified Information Within Industry; E.O. 13467, Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information; E.O. 12968, Access to Classified Information; E.O. 13488, Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust; E.O. 13587, Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information; DoD Instruction (DoDI) 1400.25, Volume 731, DoD Civilian Personnel Management System: Suitability and Fitness Adjudication for Civilian Employees; DoD Directive (DoDD) 5205.16, The DoD Insider Threat Program; DoDD 1145.02E, United States Military Entrance Processing Command (USMEPCOM); DoD 5200.2–R, Department of Defense Personnel Security Program; DoD Manual 5105.21, Volume 1, Sensitive Compartmented Information (SCI) Administrative Security Manual: Administration of Information and Information Systems Security; DoDI 1304.26, Qualification Standards for Enlistment, Appointment, and Induction; DoDI 5200.02, DoD Personnel Security Program (PSP); DoDD 5220.6, Defense Industrial Personnel Security Clearance Review Program; DoDI 5220.22, National Industrial Security Program (NISP); DoDI 5200.46, DoD Investigative and Adjudicative Guidance for Issuing the Common Access Card (CAC); Homeland Security Presidential Directive (HSPD) 12, Policy for Common Identification Standard for Federal Employees and Contractors; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

DISS is a DoD enterprise information system for personnel security, providing a common, comprehensive medium to request, record, document, and identify personnel security actions within the Department including: Determinations of eligibility and access to classified or national security information, suitability, and/or fitness for employment, and HSPD–12 determination for Personal Identity Verification (PIV) to access government facilities and systems, submitting adverse information, verification of investigation and/or adjudicative status, support of continuous evaluation and insider threat detection, prevention, and mitigation activities.

DISS consists of two applications, the Case Adjudication Tracking system (CATS) and the Joint Verification System (JVS). CATS is used by the DoD Adjudicative Community for the purpose of recording eligibility determinations. JVS is used by DoD Security Managers and Industry Facility Security Officers for the purpose of verifying eligibility, recording access determinations, submitting incidents for subsequent adjudication, and visit requests from the field (worldwide).

These records may also be used as a management tool for statistical analyses, tracking, reporting, evaluating program effectiveness, and conducting research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein, with the exception of U.S. Office of Personnel Management (OPM) Federal Investigative Services (FIS) records which must be requested directly from OPM FIS, may specifically be disclosed outside the DoD as follows:

To the White House to obtain approval of the President of the United States regarding certain military personnel office actions as provided for in DoD Instruction 1320.4, Military Officer Actions Requiring Approval of the Secretary of Defense or the President, or Confirmation by the Senate.

To the U.S. Citizenship and Immigration Services for use in alien admission and naturalization inquiries.

To a Federal agency and its employees who are eligible to have a security clearance and/or have access to classified national security information in order to ensure that the agency is informed about information that relates to and/or impacts its employees eligibility to have a security clearance and/or access to classified national security information.

To a Federal agency with contractor personnel who are eligible to have a security clearance and/or have access to classified national security information in order to ensure that the agency is informed about information that relates to and/or may impact the contractor's eligibility to have a security clearance and/or access to classified national security information.

To a contractor with an active Facility Clearance and employees who are eligible to have a security clearance and/or have access to classified national security information in order to ensure that the employer is informed about information that relates to and/or may impact its employees eligibility to have a security clearance and/or access to classified national security information.

To disclose information to contractors, grantees, experts, consultants, or volunteers performing or working on a contract, service, or job for the Federal Government. Such recipients shall be required to comply with the Privacy Act of 1974, as amended.

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Disclosure When Requesting Information Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DoD Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

Disclosure of Requested Information Routine Use: A record from a system of records maintained by a DoD Component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

To the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

To a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States Government is a party to litigation or has interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

To a Federal, State, local, foreign, tribal, or other public authority the fact that this system of records contains information relevant to the retention of an employee, or the retention of a security clearance, contract, license, grant, or other benefit. The other agency or licensing organization may then make a request supported by written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative personnel, or regulatory action.

Private Relief Legislation Routine Use: Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget (OMB) in connection with the review of private relief legislation as set forth in OMB Circular A–19, at any stage of the legislative coordination and clearance process as set forth in that Circular.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosure to the Office of Personnel Management Routine Use: A record from a system of records subject to the Privacy Act and maintained by a DoD Component may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

Disclosure of information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Counterintelligence Purpose Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use outside the DoD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

Data Breach Remediation Purposes Routine Use. A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media and paper records.

RETRIEVABILITY:

Information is retrieved by SSN, DoD ID number, name, date of birth, state and/or country of birth, or some combination thereof.

SAFEGUARDS:

Access to personal information is restricted to those who require the records in the performance of their official duties, who are appropriately screened, investigated, and determined eligible for access. Access to personal information is further restricted by the use of Personal Identity Verification (PIV) cards for JVS and CATS. Access to self-report information by the subject is available by the use of a PIV. Physical entry is restricted by the use of locks, guards, and administrative procedures. All individuals granted access to DISS must complete initial Information Assurance and Privacy Act training and annually thereafter; and all have been through the information technology and/or security clearance eligibility process.

RETENTION AND DISPOSAL:

Records are destroyed no later than 16 years after termination of affiliation with the DoD, from the date of closing or the date of the most recent investigative activity, whichever is later except for investigations involving potentially actionable issue(s) which will be maintained for 25 years from the date of closing or the date of the most recent investigative activity.

For OPM FIS investigative reports within CATS, those records will be maintained in accordance with General Records Schedule 18 part 22 (a), and destroyed upon notice of death or not later than 5 years after the subject has separated/transferred.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director for Identity, Defense Manpower Data Center, 4800 Mark Center, Alexandria, VA 22350–4000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Manpower Data Center (DMDC) Boyers, ATTN: Privacy Act Office, P.O. Box 168, Boyers, PA 16020–0168.

Signed, written requests must contain the full name (and any alias and/or alternate names used), SSN, DoD ID Number, and date and place of birth.

RECORD ACCESS PROCEDURES:

Individuals seeking information about themselves contained in this system should address written inquiries to the Office of the Defense Manpower Data Center (DMDC) Boyers, ATTN: Privacy Act Office, P.O. Box 168, Boyers, PA 16020–0168.

Signed, written request must contain their full name (and any alias and/or alternate names used), SSN, DoD ID Number, and date and place of birth.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

NOTE: Information generated, authored, or compiled by Another Government Agency (AGA) that is relevant to the purpose of the record may be incorporated into the record. In such instances that information will be referred to the originating entity for direct response to the requester, or contact information and record access procedures for the AGA will be provided to the requester.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records and for contesting or appealing agency determinations are published in OSD Administrative Instruction 81, 32 CFR part 311; or may be obtained directly from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the individual (*e.g.* SF–85, Questionnaire for Non-Sensitive Positions, SF–85P, Questionnaire for Public Trust Positions, SF–86, Questionnaire for the National Security Positions, or self-reported information); DoD personnel systems (*e.g.* Defense Enrollment Eligibility Reporting System; Defense Civilian Personnel Data System; Electronic Military Personnel Record System, etc.); continuous evaluation records; DoD and federal adjudicative facilities/organizations; investigative agencies (*e.g.* Office of Personnel Management (OPM) Federal Investigative Services (FIS); and security managers, security officers, or other officials requesting and/or sponsoring the security eligibility or suitability determination or visitation of facility. Additional information may be obtained from other sources such as personnel security investigations, criminal or civil investigations, security representatives, subject's personal financial records, military service records, travel records, medical records, and unsolicited sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 2016–14182 Filed 6–14–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2015–OS–0099]

Manual for Courts-Martial; Publication of Supplementary Materials

AGENCY: Joint Service Committee on Military Justice (JSC), Department of Defense.

ACTION: Publication of Discussion and Analysis (Supplementary Materials) accompanying the Manual for Courts-Martial, United States (2012 ed.) (MCM).

SUMMARY: The JSC hereby publishes Supplementary Materials accompanying the MCM as amended by Executive Orders 13643, 13669, 13696, and 13730. These changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation, Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters and Testimony," June 15, 2007, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency. These Supplementary Materials have been approved by the JSC and the

Acting General Counsel of the Department of Defense, and shall be applied in conjunction with the rule with which they are associated. The Discussions are effective insofar as the Rules they supplement are effective, but may not be applied earlier than the date of publication of this notice in the **Federal Register**.

DATES: The Supplementary Materials are effective as of June 15, 2016.

FOR FURTHER INFORMATION CONTACT: Major Harlye S.M. Carlton, USMC, (703) 963–9299 or *harlye.carlton@usmc.mil.* The JSC Web site is located at: *http://jsc.defense.gov.*

SUPPLEMENTARY INFORMATION:

Public Comments: The JSC solicited public comments for these changes to the supplementary materials accompanying the MCM via the **Federal Register** on October 19, 2015 (80 FR 63204–63212, Docket ID: DOD–2015–OS–0099), held a public meeting at the Court of Appeals for the Armed Forces on November 5, 2015, and published the JSC response to public comments via the **Federal Register** on March 22, 2016 (81 FR 15272–15278, Docket ID: DOD–2015–OS–0099). The amendments to the Analysis and Discussion accompanying the MCM are as follows:

Annex

Section 1. Appendix 21, Analysis of Rules for Courts-Martial is amended as follows:

(a) Rule 306 is amended by inserting the following at the end:

"*2016 Amendment:* R.C.M. 306(b)(2) implements Section 534(b) of the National Defense Authorization Act for Fiscal Year 2015, P.L. 113–291, 19 December 2014."

(b) Rule 401 is amended by inserting the following at the end:

"*2016 Amendment:* The first paragraph of the R.C.M. 401(c) Discussion was added in light of the recommendation in the Response Systems to Adult Sexual Assault Crimes Panel's (RSP) June 2014 report for trial counsel to convey victims' preferences as to disposition to the convening authority. This Discussion implements this recommendation by allowing Service regulations to determine the appropriate authority responsible for communicating the victims' views to the convening authority. The RSP was a congressionally mandated panel tasked to conduct an independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses."

(c) Rule 604 is amended by inserting the following at the end:

"*2016 Amendment:* The fourth paragraph of the R.C.M. 604(a) Discussion was added to align the Discussion with R.C.M. 705(d)(3)."

(d) Rule 907 is amended by inserting the following at the end:

"*2016 Amendment:* R.C.M. 907(b) was amended consistent with *United States* v. *Humphries,* 71 M.J. 209 (C.A.A.F. 2012), where the court held that a defective specification does not constitute structural error or warrant automatic dismissal."

(e) Rule 1002 is amended by inserting the following at the end:

"*2016 Amendment:* R.C.M. 1002(b) clarifies the military's unitary sentencing concept. *See United States* v. *Gutierrez,* 11 M.J. 122, 123 (C.M.A. 1981); *see generally Jackson* v. *Taylor,* 353 U.S. 569 (1957)."

(f) Rule 1103(b) is amended by inserting the following immediately before the paragraph beginning with "Subsection 2(C)":

"*2016 Amendment:* R.C.M. 1103(b)(2)(B)(i) was amended in a manner that aligns the requirement for a verbatim transcript with special courts-martial jurisdictional maximum punishments."

(g) Rule 1107 is amended by inserting the following at the end:

"*2016 Amendment:* The R.C.M. 1107(b)(1) Discussion was amended to clarify that the limitations contained in Article 60 apply to the convening authority or other commander acting under Article 60."

(h) Rule 1109 is amended by inserting the following at the end:

"*2016 Amendment:* R.C.M. 1109 was modified following the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013, amendments to Article 32 and the resulting changes to R.C.M. 405 as promulgated by Executive Order 13696. The revision clarifies throughout the rule that the purpose of vacation hearings is to determine whether there is probable cause that the probationer violated any condition of the probationer's suspension."

Section 2. Appendix 22, Analysis of the Military Rules of Evidence is amended as follows:

(a) Rule 304(c) is amended by inserting the following at the end:

"*2016 Amendment:* This change brings military practice in line with federal practice. *See Opper* v. *United States,* 348 U.S. 84 (1954), and *Smith* v. *United States,* 348 U.S. 147 (1954)."

(b) Rule 311(a) is amended by inserting the following at the end:

"*2016 Amendment:* Rule 311(a)(3) incorporates the balancing test limiting the application of the exclusionary rule set forth in *Herring* v. *United States,* 555 U.S. 135 (2009), where the Supreme Court held that to trigger the exclusionary rule, "the deterrent effect of suppression must be substantial and outweigh any harm to the justice system." *Id.* at 147; *see also United States* v. *Wicks,* 73 M.J. 93, 104 (C.A.A.F. 2014) ("The exclusionary rule applies only where it results in appreciable deterrence for future Fourth Amendment violations and where the benefits of deterrence must outweigh the costs" (internal quotation marks omitted))."

(c) Rule 311(c) is amended by inserting the following at the end:

"*2016 Amendment:* Rule 311(c)(4) was added. It adopts the expansion of the "good faith" exception to the exclusionary rule set forth in *Illinois* v. *Krull,* 480 U.S. 340 (1987), where the Supreme Court held that the exclusionary rule is inapplicable to evidence obtained by an officer acting in objectively reasonable reliance on a statute later held violative of the Fourth Amendment."

(d) Rule 504 is amended by inserting the following at the end:

"*2016 Amendment:* References to gender were removed throughout the rule. Rule 504(c)(1), as amended, makes clear that the exception only applies to confidential communications. The definition of "confidential communications" was moved to Rule 504(d)."

(e) Rule 801(d)(1)(B) is amended by inserting the following immediately before the paragraph beginning with "Under Rule 801(d)(1)(C)":

"*2016 Amendment.* Rule 801(d)(1)(B)(ii) was added in accordance with an identical change to Federal Rule of Evidence 801(d)(1)(B). The amendment retains the requirement set forth in *Tome* v. *United States,* 513 U.S. 150 (1995): That under Rule 801(d)(1)(B), a consistent statement offered to rebut a charge of recent fabrication of improper influence or motive must have been made before the alleged fabrication or improper inference or motive arose. The amendment extends substantive effect to consistent statements that rebut other attacks on a witness—such as the charges of inconsistency or faulty memory. The amendment does not change the traditional and well-accepted limits on bringing prior consistent statements before the factfinder for credibility purposes. It does not allow impermissible bolstering of a witness. As before, prior consistent statements under the amendment may be brought before the factfinder only if they properly rehabilitate a witness whose credibility has been attacked. As before, to be admissible for rehabilitation, a prior consistent statement must satisfy the strictures of Rule 403. As before, the trial court has ample discretion to exclude prior consistent statements that are cumulative accounts of an event. The amendment does not make any consistent statement admissible that was not admissible previously—the only difference is that prior consistent statements otherwise admissible for rehabilitation are now admissible substantively as well."

(f) The fourth paragraph of Rule 803(6), beginning with "Paragraph 144 *d*" is amended to read as follows:

"Paragraph 144 *d* prevented a record "made principally with a view to prosecution, or other disciplinary or legal action" from being admitted as a business record."

(g) Rule 803(6) is amended by inserting the following at the end:

"*2016 Amendment:* Rule 803(6)(E) was modified following the amendment to Fed. R. Evid. 803(6), effective 1 December 2014. It clarifies that if the proponent of a record has established the requirements of the exception, then the burden is on the opponent to show a lack of trustworthiness. In meeting its burden, the opponent is not necessarily required to introduce affirmative evidence of untrustworthiness. It is appropriate to impose the burden of proving untrustworthiness on the opponent, as the basic admissibility requirements are sufficient to establish a presumption that the record is reliable."

(h) Rule 803(7) is amended by inserting the following at the end:

"*2016 Amendment:* Rule 803(7)(C) was modified following the amendment to Fed. R. Evid. 803(7), effective 1 December 2014. It clarifies that if the proponent has established the stated requirements of the exception then the burden is on the opponent to show a lack of trustworthiness."

(i) Rule 803(8) is amended by inserting the following at the end:

"*2016 Amendment:* Rule 803(8)(B) was modified following the amendment to Fed. R. Evid. 803(8)(B), effective 1 December 2014. The amendment clarifies that if the proponent has established that the record meets the stated requirements of the exception then the burden is on the opponent to show a lack of trustworthiness as public records have justifiably carried a presumption of reliability. The opponent, in meeting its burden, is not necessarily required to introduce affirmative evidence of untrustworthiness. A determination of untrustworthiness necessarily depends on the circumstances."

(j) Rule 803(8) is amended by deleting the following:

"Rule 803(8)(C) makes admissible, but only against the Government, "factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness." This provision will make factual findings made, for example, by an Article 32 Investigating Officer or by a Court of Inquiry admissible on behalf of an accused. Because the provision applies only to "factual findings," great care must be taken to distinguish such factual determinations from opinions, recommendations, and incidental inferences."

(k) Rule 803(10) is amended by inserting the following at the end:

"*2016 Amendment:* Rule 803(10) was modified following the amendment to Fed. R. Evid. 803(10), effective 1 December 2013. The amendment of the Federal Rules was in response to *Melendez-Diaz* v. *Massachusetts,* 557 U.S. 305 (2009). The *Melendez-Diaz* Court declared that a testimonial certificate could be admitted if the accused is given advance notice and does not timely demand the presence of the official who prepared the certificate. The amendment to Rule 803(10) is largely identical to the amendment to the Fed. R. Evid. 803(10) but has been modified in a manner that reflects differences in the military environment."

Section 3. Appendix 23, Analysis of Punitive Articles is amended as follows:

(a) Paragraph 4, Article 80—Attempts, is amended by inserting the following at the end:

"*2016 Amendment:* Subparagraph e. as amended includes exceptions to the general rule that mandatory minimum punishments shall not apply to attempts. This change brings this paragraph into conformity with Article 56 as amended by Section 1705 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013."

(b) Paragraph 110, Article 134—Threat, communicating, is amended by inserting the following at the end:

"*2016 Amendment:* Subparagraph c. was amended following the Supreme Court's decision in *Elonis* v. *United States,* 135 S. Ct. 2001 (2015)."

Section 4. The Discussion to Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) The first paragraph of the Discussion immediately following R.C.M. 204(a) is amended to read as follows:

"Such regulations should describe procedures for ordering a reservist to active duty for disciplinary action, preferral of charges, preliminary hearings, forwarding of charges, referral of charges, designation of convening authorities and commanders authorized to conduct nonjudicial punishment proceedings, and for other appropriate purposes."

(b) Section (6) of the Discussion immediately following R.C.M. 305(h)(2)(B)(iv) and immediately prior to R.C.M. 305(h)(2)(C) is amended to read as follows:

"(6) The accused's record of appearance at or flight from other preliminary hearings, trials, and similar proceedings; and"

(c) A new Discussion is inserted after R.C.M. 306(e)(2) and before R.C.M. 306(e)(3) and reads as follows:

"Any preferences as to disposition expressed by the victim regarding jurisdiction, while not binding, should be considered by the cognizant commander prior to making initial disposition.

The cognizant commander should continue to consider the views of the victim as to jurisdiction until final disposition of the case."

(d) Section (H)(ii) of the Discussion immediately following R.C.M. 307(c)(3) is amended to read as follows:

"(ii) *Victim.* In the case of an offense against the person or property of a person, the first name, middle initial, and last name or first, middle, and last initials of such person should be alleged, if known. If the name of the victim is unknown, a general physical description may be used. If this cannot be done, the victim may be described as "a person whose name is unknown." Military rank or grade should be alleged, and must be alleged if an element of the offense, as in an allegation of disobedience of the command of a superior officer. If the person has no military position, it may otherwise be necessary to allege the status as in an allegation of using provoking words toward a person subject to the code. *See* paragraph 42 of Part IV. Counsel for the government should be aware that if initials of victims are used, additional notice of the identity of victims will be required."

(e) The Discussion immediately following R.C.M. 401(c) is amended by inserting the following new paragraph at the beginning of the Discussion:

"When an alleged offense involves a victim, the victim should, whenever practicable, be provided an opportunity to express views regarding the disposition of the charges. The commander with authority to dispose of charges should consider such views of the victim prior to deciding how to dispose of the charges and should continue to consider the views of the victim until final disposition of the case. A "victim" is an individual who is alleged to have suffered direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration."

(f) The Discussion immediately following R.C.M. 403(b)(5) is amended to read as follows:

"A preliminary hearing should be directed when it appears the charges are of such a serious nature that trial by general court-martial may be warranted. *See* R.C.M. 405. If a preliminary hearing of the subject has already been conducted, see R.C.M. 405(b)."

(g) The Discussion immediately following R.C.M. 407(a)(5) is amended to read as follows:

"A preliminary hearing should be directed when it appears the charges are of such a serious nature that trial by general court-martial may be warranted. *See* R.C.M. 405. If a preliminary hearing of the subject has already been conducted, see R.C.M. 405(b)."

(h) The Discussion immediately following R.C.M. 603(d) is amended to read as follows:

"If there has been a major change or amendment over the accused's objection to a charge already referred, a new referral is necessary. Similarly, in the case of a general court-martial, a new preliminary hearing under R.C.M. 405 will be necessary if the charge as amended or changed was not covered in the prior preliminary hearing. If the substance of the charge or specification as amended or changed has not been referred or, in the case of a general court-martial, has not been subject to a preliminary hearing, a new referral and, if appropriate, preliminary hearing are necessary. When charges are re-referred, they must be served anew under R.C.M. 602."

(i) The Discussion immediately following R.C.M. 604(a) is amended by inserting the following new paragraph between the third and fourth paragraphs:

"When an alleged offense involves a victim, the victim should, whenever practicable, be provided an opportunity to express views regarding the withdrawal of any charges or specifications in which the victim is named. The convening authority or other individual authorized to act on the charges should consider such views of the victim prior to withdrawing said charges or specifications and should continue to consider the views of the victim until final disposition of the case. A "victim" is an individual who is alleged to have suffered direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration."

(j) The second sentence of the Discussion immediately following R.C.M. 703(e)(2)(B) is amended to read as follows:

"In accordance with subsection (f)(4)(B) of this rule, a *subpoena duces tecum* to produce books, papers, documents, data, or other objects or electronically stored information for preliminary hearings pursuant to Article 32 may be issued, following the convening authority's order directing such preliminary hearing, by the counsel representing the United States."

(k) The last paragraph of the Discussion immediately following R.C.M. 703(e)(2)(G)(i) is amended to read as follows:

"For subpoenas issued for a preliminary hearing pursuant to Article 32 under subsection (f)(4)(B), the general court-martial convening authority with jurisdiction over the case may issue a warrant of attachment to compel production of documents."

(l) The second sentence of the Discussion immediately following R.C.M. 703(f)(4)(B) is amended to read as follows:

"Although the amended language cites Article 32(b), this new subpoena power extends to documents subpoenaed by counsel representing the United States, whether or not requested by the defense."

(m) A new Discussion section is inserted immediately following R.C.M. 705(c)(2)(C) and reads as follows:

"A promise to provide restitution includes restitution to a victim of an alleged offense committed by the accused in accordance with Article 6b(a)(6)."

(n) The Discussion immediately following R.C.M. 905(b)(1) is amended to read as follows:

"Such nonjurisdictional defects include unsworn charges, inadequate Article 32 preliminary hearing, and inadequate pretrial advice. *See* R.C.M. 307; 401–407; 601–604."

(o) The Discussion section following R.C.M. 907(b)(1)(B) is deleted and reinserted immediately after R.C.M. 907(b)(2)(E).

(p) The third sentence in the Discussion immediately following R.C.M. 914(a)(2) is amended to read as follows:

"This rule does not apply to preliminary hearings under Article 32."

(q) The Discussion immediately after the sole paragraph in R.C.M. 1002 is moved to immediately after R.C.M. 1002(b).

(r) The Discussion section following R.C.M. 1105(b)(2)(C) is amended to read as follows:

"For example, post-trial conduct of the accused, such as providing restitution to the victim of the accused's offense in accordance with Article 6b(a)(6), or exemplary behavior, might be appropriate."

(s) The Discussion section following R.C.M. 1107(b)(1) is amended to read as follows:

"The action is taken in the interests of justice, discipline, mission requirements, clemency, and other appropriate reasons. If errors are noticed by the convening authority, the convening authority may take corrective action under this rule to the extent that the convening authority is empowered by Article 60."

(t) A new Discussion section is inserted immediately following R.C.M. 1107(c)(2) and reads as follows:

"The military follows a unitary sentencing model where the court-martial may impose only a single, unitary sentence covering all of the offenses for which there was a finding of guilty; courts-martial do not impose sentences per offense. *See* R.C.M. 1002(b). Therefore, where the adjudged sentence for the case includes dismissal, dishonorable discharge, bad-conduct discharge, or confinement for more than six months, the sentence adjudged for the entire case, and not per offense, controls when deciding what actions are available to the convening authority."

(u) A new Discussion section is inserted immediately following R.C.M. 1107(e)(1) and reads as follows:

"Pursuant to Article 60(c)(4)(A) and subsection (d)(1)(A) and (B) of this rule, disapproval of the sentence is not authorized where a court-martial's adjudged sentence for the case includes confinement for more than six months or a sentence of dismissal, dishonorable discharge, or bad-conduct discharge. In such cases, the convening authority may not order a rehearing because disapproval of the sentence is required for a convening authority to order a rehearing. *See* Article 60(f)(3)."

(v) The following Discussion immediately after the new R.C.M. 1107(e)(2)(B)(ii) is deleted:

"A sentence rehearing, rather than a reassessment, may be more appropriate in cases where a significant part of the government's case has been dismissed. The convening authority may not take any actions inconsistent with directives of superior competent authority. Where that directive is unclear, appropriate clarification should be sought from the authority issuing the original directive."

(w) A new Discussion is inserted after the new R.C.M. 1107(e)(2)(B)(iii) and reads as follows:

"A sentence rehearing, rather than a reassessment, may be more appropriate in cases where a significant part of the government's case has been dismissed. The convening authority may not take any actions inconsistent with directives of superior competent authority. Where that directive is unclear, appropriate clarification should be sought from the authority issuing the original directive. For purposes of R.C.M. 1107(e)(1)(B), the term "superior competent authority" does not include superior convening authorities but rather, for example, the appropriate Judge Advocate General or a court of competent jurisdiction."

(x) A Discussion is inserted after the new R.C.M. 1107(e)(2)(C)(ii) and reads as follows:

"For example, if proof of absence without leave was by improperly authenticated documentary evidence admitted over the objection of the defense, the convening authority may disapprove the findings of guilty and sentence and order a rehearing if there is reason to believe that properly authenticated documentary evidence or other admissible evidence of guilt will be available at the rehearing. On the other hand, if no proof of unauthorized absence was introduced at trial, a rehearing may not be ordered."

(y) A new paragraph is added to the end of the Discussion immediately following R.C.M. 1108(b) and reads as follows:

"The limitations on suspension of the execution of any sentence or part thereof contained in Article 60 apply to a decision by a convening authority or other person acting on the case under Article 60, as opposed to an individual remitting or suspending a sentence pursuant to a different authority, such as Article 74. *See* R.C.M. 1107(d)."

(z) A new Discussion section is inserted immediately following the new R.C.M. 1109(h)(4) and reads as follows:

"The following oath may be given to witnesses:

"Do you (swear) (affirm) that the evidence you give shall be the truth, the whole truth, and nothing but the truth (so help you God)?"

The hearing officer is required to include in the record of the hearing, at a minimum, a summary of the substance of all testimony.

All hearing officer notes of testimony and recordings of testimony should be preserved until the end of trial.

If during the hearing any witness subject to the Code is suspected of an offense under the Code, the hearing officer should comply with the warning requirements of Mil. R. Evid. 305(c), (d), and, if necessary, (e).

Bearing in mind that the probationer and government are responsible for preparing and presenting their cases, the hearing officer may ask a witness questions relevant to the limited purpose of the hearing. When questioning a witness, the hearing officer may not depart from an impartial role and become an advocate for either side."

Dated: June 10, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–14170 Filed 6–14–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0043]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; International Computer and Information Literacy Study (ICILS 2018) Field Test and Recruitment for Main Study

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 15, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0043. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–349, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: International Computer and Information Literacy Study (ICILS 2018) Field Test and Recruitment for Main Study.

OMB Control Number: 1850—New.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 1,983.

Total Estimated Number of Annual Burden Hours: 2,040.

Abstract: The International Computer and Information Literacy Study (ICILS) is a computer-based international assessment of eighth-grade students' computer and information literacy (CIL) skills that will provide a comparison of U.S. student performance and technology access and use with those of the international peers. ICILS collects data on eighth-grade students' abilities to collect, manage, evaluate, and share digital information; their understanding of issues related to the safe and responsible use of electronic information; on student access to, use of, and engagement with ICT at school and at home; school environments for teaching and learning CIL; and teacher practices and experiences with ICT. The data collected through ICILS will also provide information about the nature and extent of the possible "digital divide" and has the potential to inform understanding of the relationship between technology skills and experience and student performance in other core subject areas. ICILS is conducted by the International Association for the Evaluation of Educational Achievement (IEA), an international collective of research organizations and government agencies that create the assessment framework, assessment, and background questionnaires. In the U.S., the National Center for Education Statistics (NCES) conducts this study. In preparation for the ICILS 2018 main study, NCES will conduct a field test from March through May 2017 to evaluate new assessment items and background questions, to ensure practices that promote low exclusion rates, and to ensure that classroom and student sampling procedures proposed for the main study are successful. The U.S. ICILS main study will be conducted in the spring of 2018. Field recruitment will begin in October 2016 and main study recruitment in May of 2017. This request is for the 2017 field test and the 2018 main study recruitment activities and the 2017 field test data collection.

Dated: June 9, 2016.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–14050 Filed 6–14–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before August 3, 2016. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to: Kelly Yaker, National Renewable Energy Laboratory, Attn: Recipient's Name Mail Stop: RSF034, 15013 Denver West Parkway, Golden, CO 80401, or by fax at 303–630–2108, or by email at *kelly.yaker@nrel.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Brian Naughton, Sandia National Laboratories, 505–844–4033, *bnaught@sandia.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. "New"; (2) Information Collection Request Title: Wind Technology to Market Industry Survey; (3) Type of Request: New collection; (4) Purpose: In an effort to improve technology transfer from the Department of Energy and the national labs, to the U.S. wind energy industry, this survey is necessary to collect data from industry members in order to identify:

- New and improved research capabilities and tools that would be valuable to the wind industry
- Opportunities for, and barriers to, national laboratory and industry collaboration on technology development and transfer in those high-value areas.

Currently, no such information is available to labs. The information collected in this survey will be published in a report and help to inform new possibilities for the national labs. (5) Annual Estimated Number of Respondents: 80; (6) Annual Estimated Number of Total Responses: 80; (7) Annual Estimated Number of Burden Hours: 19.5 Hours; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $200,000.

Statutory Authority: DOE Org. Act (42 U.S.C. 7373).

Issued in Washington, DC, on June 3, 2016.

José Zayas,

Office Director, Wind and Water Power Technologies Office.

[FR Doc. 2016–14168 Filed 6–14–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–131–000.
Applicants: Beacon Solar 4, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, Request for Expedited Consideration and Confidential Treatment of Beacon Solar 4, LLC.
Filed Date: 6/8/16.
Accession Number: 20160608–5237.
Comments Due: 5 p.m. ET 6/29/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–116–000.
Applicants: Rush Springs Wind Energy, LLC.
Description: Notification of Self-Certification of Exempt Wholesale Generator Status of Rush Springs Wind Energy, LLC.
Filed Date: 6/9/16.
Accession Number: 20160609–5179.
Comments Due: 5 p.m. ET 6/30/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1825–007.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2016–06–09 Filing in Compliance with May 31 Order Delaying RSI Effective Date to be effective 11/1/2016.
Filed Date: 6/9/16.
Accession Number: 20160609–5260.
Comments Due: 5 p.m. ET 6/30/16.

Docket Numbers: ER16–1378–001.
Applicants: Rocky Mountain Reserve Group.
Description: Compliance filing: 20160609_Bylaws Compliance Filing to be effective 4/15/2016.
Filed Date: 6/9/16.

Accession Number: 20160609–5182.
Comments Due: 5 p.m. ET 6/30/16.

Docket Numbers: ER16–1897–000.
Applicants: Summer Solar LLC.
Description: Baseline eTariff Filing: Co-Tenancy Agreement to be effective 7/7/2016.
Filed Date: 6/9/16.
Accession Number: 20160609–5007.
Comments Due: 5 p.m. ET 6/30/16.

Docket Numbers: ER16–1898–000.
Applicants: Antelope Big Sky Ranch LLC.
Description: Baseline eTariff Filing: Antelope Big Sky Ranch LLC Co-Tenancy Agreement to be effective 7/7/2016.
Filed Date: 6/9/16.
Accession Number: 20160609–5008.
Comments Due: 5 p.m. ET 6/30/16.

Docket Numbers: ER16–1899–000.
Applicants: Summer Solar LLC.
Description: Baseline eTariff Filing: Shared Facilities Agreement to be effective 7/7/2016.
Filed Date: 6/9/16.
Accession Number: 20160609–5009.
Comments Due: 5 p.m. ET 6/30/16.

Docket Numbers: ER16–1900–000.
Applicants: Antelope Big Sky Ranch LLC.
Description: Baseline eTariff Filing: Antelope Big Sky Ranch LLC SFA to be effective 7/7/2016.
Filed Date: 6/9/16.
Accession Number: 20160609–5010.
Comments Due: 5 p.m. ET 6/30/16.

Docket Numbers: ER16–1901–000.
Applicants: Elevation Solar C LLC.
Description: Baseline eTariff Filing: Elevation Solar C LLC MBR Tariff to be effective 6/10/2016.
Filed Date: 6/9/16.
Accession Number: 20160609–5160.
Comments Due: 5 p.m. ET 6/30/16.

Docket Numbers: ER16–1902–000.
Applicants: Celesta Energy, Inc.
Description: Tariff Cancellation: Celesta Energy, Inc. Cancellation of Tariff to be effective 6/10/2016.
Filed Date: 6/9/16.
Accession Number: 20160609–5176.
Comments Due: 5 p.m. ET 6/30/16.

Docket Numbers: ER16–1903–000.
Applicants: Lighthouse Energy Group, LLC.
Description: Tariff Cancellation: Lighthouse Energy Group, LLC Cancellation of Tariff to be effective 6/10/2016.
Filed Date: 6/9/16.
Accession Number: 20160609–5180.
Comments Due: 5 p.m. ET 6/30/16.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD16–8–000.
Applicants: North American Electric Reliability Corporation, Northeast Power Coordinating Council.
Description: Joint Petition of the North American Electric Reliability Corporation and Northeast Power Coordinating Council for Approval of Retirement of Regional Reliability Standard PRC–002–NPCC–01.
Filed Date: 6/9/16.
Accession Number: 20160609–5162.
Comments Due: 5 p.m. ET 7/11/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number:

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–14146 Filed 6–14–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9947–46–ORD]

Human Studies Review Board; Notification of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Office of the Science Advisor announces two separate public meetings of the Human Studies Review Board (HSRB) to advise the Agency on the ethical and scientific reviews of EPA research involving human subjects.

DATES: A public virtual meeting will be held on July 12–13, 2016, from 1:00 p.m. to approximately 5:00 p.m. Eastern Time on July 12 and from 1:00 p.m. to approximately 4:30 p.m. on July 13. A separate, subsequent teleconference meeting is planned for Thursday, August 25, 2016, from 2:00 p.m. to approximately 3:30 p.m. for the HSRB to finalize its Final Report of the July 12–13, 2016 meeting.

ADDRESSES: Both of these meetings will be conducted entirely by telephone and on the Internet using Adobe Connect. For detailed access information visit the HSRB Web site: *http://www2.epa.gov/osa/human-studies-review-board.*

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to receive further information should contact the HSRB Designated Federal Official, Jim Downing on telephone number (202) 564–2468; fax number: (202) 564–2070; email address: *downing.jim@epa.gov;* or mailing address: Environmental Protection Agency, Office of the Science Advisor, Mail code 8105R, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Meeting access: These meetings are open to the public. Meeting materials are available at the HSRB Web site: *http://www2.epa.gov/osa/human-studies-review-board* for questions on document availability, or if you do not have access to the Internet, consult with Jim Downing listed under **FOR FURTHER INFORMATION CONTACT.**

Special accommodations. For information on access or services for individuals with disabilities, or to request accommodation of a disability, please contact Jim Downing listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

How may I participate in this meeting?

The HSRB encourages the public's input. You may participate in these meetings by following the instructions in this section.

1. *Oral comments.* Requests to present oral comments during either conference call will be accepted up to Noon Eastern Time on Thursday, July 5, 2016, for the July 12–13, 2016 meeting and up to Noon Eastern Time on Thursday, August 18, 2016 for the August 25, 2016 conference call. To the extent that time permits, interested persons who have not pre-registered may be permitted by the HSRB Chair to present oral comments during either call at the designated time on the agenda. Oral comments before the HSRB are generally limited to five minutes per individual or organization. If additional time is available, further public comments may be possible.

2. *Written comments.* Submit your written comments prior to the meetings. For the Board to have the best opportunity to review and consider your

comments as it deliberates, you should submit your comments by Noon Eastern Time on Thursday, July 5, 2016, for the July 12–13, 2016, and by noon Eastern Time on Thursday, August 18, 2016 for the August 25, 2016 teleconference. If you submit comments after these dates, those comments will be provided to the HSRB members, but you should recognize that the HSRB members may not have adequate time to consider your comments prior to their discussion. You should submit your comments to Jim Downing listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

Background

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act 5 U.S.C. App. 2 § 9. The HSRB provides advice, information, and recommendations to the EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) Research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen EPA's programs for protection of human subjects of research.

Topics for discussion. On Tuesday, July 12, 2016, EPA's Human Studies Review Board will consider a topic from the Agricultural Handlers Exposure Task Force: A Completed Studies and Monograph Report for Agricultural Handler Exposure during Open Pour Mixing/Loading of Wettable Powders. On Wednesday, July 13, 2016 the HSRB will consider: A Completed Study and Monograph Report for Agricultural Handler Exposure during Mixing/Loading of Pesticide Products in Water Soluble Packets also from the Agricultural Handlers Exposure Task Force.

Meeting minutes and final reports. Minutes of these meetings, summarizing the matters discussed and recommendations made by the HSRB, will be released within 90 calendar days of the meeting. These minutes will be available at *http://www2.epa.gov/osa/human-studies-review-board*. In addition, information regarding the HSRB's Final Report, will be found at *http://www2.epa.gov/osa/human-studies-review-board* or from Jim Downing listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 9, 2016.

Thomas Sinks,

Director, Office of the Science Advisor.

[FR Doc. 2016–14179 Filed 6–14–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0041; FRL–9947–73–OAR]

Proposed Information Collection Request; Comment Request; RadNet (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), "RadNet (Renewal)" (EPA ICR No. 0877.13, OMB Control No. 2060–0015) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through August 31, 2016. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before August 15, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0041, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: John Griggs, OAR/ORIA/NAREL, Environmental Protection Agency, National Analytical Radiation Environmental Laboratory, 540 South Morris Ave., Montgomery, AL 36115; telephone number: (334) 270–3400; fax number: (334) 270–3450; email address: *Griggs.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: RadNet is a national network of stations collecting sampling media that include air, precipitation, and drinking water. Samples are sent to EPA's National Analytical Radiation Environmental Lab (NAREL) in Montgomery, Alabama, where they are analyzed for radioactivity. RadNet provides emergency response/homeland security and ambient monitoring information on levels of environmental radiation across the nation. All stations, usually operated by state and local personnel, participate in RadNet voluntarily. Station operators complete information forms that accompany the samples. The forms request information pertaining to sample type, sample location, start and stop date and times for sampling, length of sampling period, and volume represented. Data from RadNet are made available regularly on the Agency Web sites—Envirofacts and the EPA Web site *www.epa.gov/radnet.*

Form Numbers: 5900–23, 5900–24, 5900–27, 5900–29.

Respondents/affected entities: Primarily State and Local Officials.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 235 (total).

Frequency of response: Biweekly, monthly, quarterly.

Total estimated burden: 2,768 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2,478,647 (per year), includes $2,338,804 annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of 4,517 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to transfer of the milk program to FDA and the elimination of radiologically screening air-filters prior to NAREL shipment.

Dated: June 1, 2016.

Jonathan D. Edwards,

Acting Director, Office of Radiation and Indoor Air.

[FR Doc. 2016–14177 Filed 6–14–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9947–66–OA]

Notification of a Public Teleconference of the Chartered Clean Air Scientific Advisory Committee (CASAC) and the CASAC Particulate Matter Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the Chartered Clean Air Scientific Advisory Committee (CASAC) and the CASAC Particulate Matter (PM) Panel to discuss the CASAC draft review of EPA's *Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter (External Review Draft—April 2016).*

DATES: The teleconference will be held on Tuesday, August 9, 2016, from 1:00 p.m. to 4:00 p.m. (Eastern Time).

Location: The public teleconference will be held by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain information concerning the public teleconference may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone/voice mail at (202) 564–2050 or at *yeow.aaron@epa.gov.* General information about the CASAC, as well as any updates concerning the meeting announced in this notice, may be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409(d)(2), in part to review air quality criteria and National Ambient Air Quality Standards (NAAQS) and recommend any new NAAQS and revisions of existing criteria and NAAQS as may be appropriate. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six "criteria" air pollutants, including particulate matter. The EPA is currently reviewing the NAAQS for particulate matter. Pursuant to FACA and EPA policy, notice is hereby given that the Chartered CASAC and the CASAC PM Panel will hold a public teleconference to discuss the CASAC draft review of the EPA's *Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter (External Review Draft—April 2016).* The Chartered CASAC and the CASAC PM Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Availability of Meeting Materials: Agendas and materials in support of this meeting will be placed on the EPA Web site at *http://www.epa.gov/casac* in advance of the meeting. For technical questions and information concerning the Draft PM Integrated Review Plan, please contact Dr. Scott Jenkins of EPA's Office of Air and Radiation at (919) 541–1167, or *jenkins.scott@epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. Interested members of the public may submit relevant written or oral information on the topic of this advisory activity, and/or the group conducting the activity, for the CASAC to consider during the advisory process. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation on a public teleconference will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via email) at the contact information noted above by August 2, 2016, to be placed on the list of public speakers.

Written Statements: Written statements should be supplied to the DFO via email at the contact information noted above by August 2, 2016, so that the information may be made available to the Panel members for their consideration. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or *yeow.aaron@epa.gov.* To request accommodation of a disability, please contact Mr. Yeow preferably at least ten days prior to each meeting to give EPA as much time as possible to process your request.

Dated: June 7, 2016.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2016–14176 Filed 6–14–16; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Notice

TIME AND DATE: Monday, June 20, 2016, 9:30 a.m. Eastern Time.

PLACE: Jacqueline A. Berrien Training Center on the First Floor of the EEOC Office Building, 131 "M" Street NE., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and

2. Rebooting Workplace Harassment Prevention: Key Findings from the Report of Commissioners Chai R. Feldblum and Victoria A. Lipnic, Co-Chairs of the EEOC's Select Task Force on the Study of Harassment in the Workplace.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. Seating is limited and it is suggested that visitors arrive 30 minutes before the meeting in order to be processed through security and escorted to the meeting room. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides information about Commission meetings on its Web site, *www.eeoc.gov.*, and provides a recorded announcement a week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation and Communication Access Realtime Translation (CART) services at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

CONTACT PERSON FOR MORE INFORMATION: Bernadette B. Wilson, Acting Executive Officer on (202) 663–4077.

Dated: June 13, 2016.

Bernadette B. Wilson,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 2016–14236 Filed 6–13–16; 11:15 am]

BILLING CODE 6570–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10009 First Heritage Bank, N.A., Newport Beach, California

NOTICE IS HEREBY GIVEN that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for First Heritage Bank, N.A., Newport Beach, California ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of First Heritage Bank, N.A., on July 25, 2008. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: June 9, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–14051 Filed 6–14–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (3064–0001, –0174, –0188 & –0191)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995. On April 6, 2016, (81 FR 19971), the FDIC requested comment for 60 days on a proposal to renew the information collections described below. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these collections, and again invites comment on this renewal.

DATES: Comments must be submitted on or before July 15, 2016.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room MB–3016, or Manny Cabeza, (202.898.3767), Counsel, Room MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper or Manny Cabeza, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently-approved collections of information:

1. *Title:* Charter and Federal Deposit Insurance Application.

OMB Number: 3064–0001.

Affected Public: Banks or savings associations wishing to become FDIC insured depository institutions.

Annual Number of Respondents: 42.

Frequency of Response: On occasion.

Estimated Time per Response: 125 hours.

Total Annual Burden: 5,250 hours.

General Description: The Federal Deposit Insurance Act requires financial institutions to apply to the FDIC to obtain deposit insurance. This collection provides FDIC with the information needed to evaluate the applications.

2. *Title:* Interagency Guidance on Funding and Liquidity Risk Management.

OMB Number: 3064–0174.

Affected Public: Insured state nonmember banks and state savings associations.

Frequency of Response: Occasionally (Paragraph 14); Quarterly (Paragraph 20).

Annual Number of Respondents: 3,947.

Burden Estimate:

	Number of respondents	Average hours per response	Responses per year	Total hours
Paragraph 14 (Record Keeping):				
Large Institutions(over $20 billion in assets)	*19*	*720*	*1*	*13,680*
Mid-size Institutions($1 to $20 billion in assets)	*329*	*240*	*1*	*78,960*
Small Institutions(less than $1 billion in assets)	*3,599*	*80*	*1*	*287,920*
Paragraph 14 Subtotal	*3,947*			*380,560*
Paragraph 20 (Reporting):				
All supervised institutions	*3,947*	*4*	*12*	*189,456*
Total Burden Hours				*570,016*

General Description: The information collection includes reporting and recordkeeping requirements related to sound risk management principles applicable to insured depository institutions. To enable an institution and its supervisor to evaluate the liquidity risk exposure of an institution's individual business lines and for the institution as a whole, the guidance summarizes principles of sound liquidity risk management and advocates the establishment of policies and procedures that consider liquidity costs, benefits, and risks in strategic planning. In addition, the guidance encourages the use of liquidity risk reports that provide detailed and aggregate information on items such as cash flow gaps, cash flow projections, assumptions used in cash flow projections, asset and funding concentrations, funding availability, and early warning or risk indicators. This is intended to enable management to assess an institution's sensitivity to changes in market conditions, the institution's financial performance, and other important risk factors.

3. *Title:* Appraisals for Higher-Priced Mortgage Loans.

OMB Number: 3064–0188.

Affected Public: Insured state nonmember banks and state savings associations.

Estimated Number of Respondents: 2,428.

Frequency of Response: Occasionally.

Burden Estimate:

	Number of respondents	Number of responses	Hours per response	Total burden hours
Review and Provide Copy of Full Interior Appraisal (reporting burden):				
Non-automated responders	809	13	.25	2,629
Automated responders	1,619	13	.08	1,684
Subtotal	2,428			*4,313*
Investigate and Verify Requirement for Second Appraisal (record keeping burden):				
Non-automated responders	809	8	.25	1,618
Automated responders	1,619	8	.08	1,036
Subtotal	2,428			*2,654*
Conduct and Provide Second Appraisal (reporting burden):				
Non-automated responders	809	1	.25	202
Automated responders	1,619	1	.08	129
Subtotal	2,428			*331*
Total Annual Burden				*7,298*

General Description: Section 1471 of the Dodd-Frank Act established a new Truth in Lending (TILA) section 129H, which contains appraisal requirements applicable to *higher-risk mortgages* and prohibits a creditor from extending credit in the form of a higher-risk mortgage loan to any consumer without meeting those requirements. A *higher-risk mortgage* is defined as a residential mortgage loan secured by a principal dwelling with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set by certain enumerated percentage point spreads. Additionally, 12 CFR 1026 allows a creditor to make a higher-risk mortgage loan only if certain conditions are met. The creditor must obtain a written appraisal performed by a certified or licensed appraiser who must conduct a physical property visit of the interior of the property. At application, the applicant must be provided with a statement regarding the purpose of the appraisal; a notice that that the creditor will provide the applicant a copy of any written appraisal; and notice that that the applicant may choose to have a separate appraisal conducted at the expense of the applicant. The creditor must also provide the consumer with a free copy of any written appraisals obtained for the transaction at least three business days before closing.

The rule also requires a higher-risk mortgage loan creditor to obtain an additional written appraisal, from a different licensed or certified appraiser, at no cost to the borrower, if: The higher-risk mortgage loan will finance the acquisition of the consumer's principal dwelling; the seller acquired the home within 180 days of signing the agreement to sell the property; and the consumer is purchasing the home for a higher price than the seller paid.

The additional written appraisal generally must include the following information: (1) An analysis of the difference in sale prices (*i.e.*, the sale price paid by the seller and the acquisition price of the property as set forth in the consumer's purchase agreement); (2) changes in market conditions; and (3) any improvements made to the property between the date of the previous sale and the current sale.

The information collection requirements are needed to protect consumers and promote the safety and soundness of creditors making higher-risk mortgage loans. This information is used by creditors to evaluate real estate collateral in higher-risk mortgage loan transactions and by consumers entering these transactions.

4. *Title:* Interagency Guidance on Leveraged Lending.

OMB Number: 3064–0191.

Affected Public: Insured state nonmember banks and state savings associations.

Estimated Number of Respondents: 10.

Frequency of Response: Occasionally.

Burden Estimate:

	Number of respondents	Estimated annual frequency	Estimated average hours per response	Estimated total annual burden hours
Implementation Burden:				
Recordkeeping burden	1	1	986.7	986.7
Total Implementation Burden				986.7
Ongoing Burden:				
Recordkeeping burden	9	1	529.3	4,763.7
Total Ongoing Burden				4,763.7
Total PRA Burden				5,750.4

General Description: The Guidance describes expectations for the sound risk management of leveraged lending activities, including the importance for institutions to develop and maintain: (a) Transactions structured to reflect a sound business premise, an appropriate capital structure, and reasonable cash flow and balance sheet leverage; (b) A definition of leveraged lending that facilitates consistent application across all business lines; (c) Well-defined underwriting standards; (d) a credit limit and concentration framework consistent with the institution's risk appetite; (e) Sound MIS that enable management to identify, aggregate, and monitor leveraged exposures and comply with policy across all business lines; (f) strong pipeline management policies and procedures; and (g) guidelines for conducting periodic portfolio and pipeline stress tests to quantify the potential impact of economic and market conditions on the institution's asset quality, earnings, liquidity, and capital.

The guidance outlines high-level principles related to safe and sound leveraged lending activities, including underwriting considerations, assessing and documenting enterprise value, risk management expectations for credits awaiting distribution, stress testing expectations and portfolio management, and risk management expectations, all of which will be reviewed during supervisory examinations to assess how well the financial institution is managing its risk. Banks will not be submitting documentation to the FDIC. Rather, FDIC examiners will review this documentation during examinations to assess a bank's management of its risk.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 10th day of June 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–14120 Filed 6–14–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10243 Bank of Florida—Tampa Bay; Tampa, Florida

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10243 Bank of Florida—Tampa Bay, Tampa, Florida (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Bank of Florida—Tampa Bay (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective June 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: June 9, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–14066 Filed 6–14–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10241 Bank of Florida—Southeast, Ft. Lauderdale, Florida

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10241 Bank of Florida—Southeast, Ft. Lauderdale, Florida (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Bank of Florida—Southeast (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective June 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: June 9, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–14065 Filed 6–14–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011117–055.

Title: United States/Australasia Discussion Agreement.

Parties: ANL Singapore Pte Ltd.; CMA–CGM.; Hamburg-Süd; and Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment reflects the resignations of Compagnie Maritime Marfret S.A. and Hapag-Lloyd A.G., effective June 6, 2016 and June 11, 2016, respectively.

Agreement No.: 012417.

Title: CMA CGM/APL West Med-USEC Space Charter Agreement.

Parties: CMA CGM S.A.; APL Co. Pte Ltd; American President Lines, Ltd.

Filing Party: Draughn B. Arbona, Esq; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The agreement authorizes CMA CGM to charter space to APL in the trade between the U.S. East Coast on the one hand, and Italy, France, and Spain on the other hand.

By Order of the Federal Maritime Commission.

Dated: June 10, 2016.

Rachel E. Dickon,

Secretary.

[FR Doc. 2016–14153 Filed 6–14–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 29, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *James E. Mulkin, James E. Mulkin, Jr., Joel W. Mulkin, Frances D. Mulkin, Jonathan P. Mulkin, and Joan H. Mulkin,* all of Bessemer, Alabama; to acquire an additional 2.74 percent of the outstanding shares of FirstFed Bancorp, Inc., and thereby indirectly acquire shares of First Financial Bank, both in Bessemer, Alabama.

Board of Governors of the Federal Reserve System, June 9, 2016.

Margaret M. Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–14089 Filed 6–14–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Marquis Bancorp, Inc.*, to become a bank holding company by acquiring 100 percent of the outstanding shares of Marquis Bank, both in Coral Gables, Florida.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *First Mid-Illinois Bancshares, Inc.*, Mattoon, Illinois; to merge with First Clover Leaf Financial Corp, and thereby indirectly acquire First Clover Leaf Bank, National Association, both in Edwardsville, Illinois.

Board of Governors of the Federal Reserve System, June 9, 2016.

Margaret M. Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–14088 Filed 6–14–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 142 3039]

Practice Fusion, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 8, 2016.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/practicefusionconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Practice Fusion, Inc.—Consent Agreement; File No. 142 3039" on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/practicefusionconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write "Practice Fusion, Inc.—Consent Agreement; File No. 142 3039" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Allison Lefrak, Attorney, (202–326–2804) or Ryan Mehm, Attorney, (202–326–2918), Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 8, 2016), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 8, 2016. Write "Practice Fusion, Inc.—Consent Agreement; File No. 142 3039" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/practicefusionconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write "Practice Fusion, Inc.—Consent Agreement; File No. 142 3039" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 8, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

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[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a consent order from Practice Fusion, Inc. ("Practice Fusion").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Since 2007, Practice Fusion has provided services for healthcare providers. Since 2007, its core service has been a cloud-based electronic health record ("EHR") that allows healthcare providers in the ambulatory/out-patient setting to store and utilize health information. In 2009, Practice Fusion launched the Patient Fusion Web site, *www.patientfusion.com* ("Patient Fusion"), with an online portal that allows patients, who have been granted access by their healthcare providers, to view, download, and transmit to other providers their health information and send and receive secure messages directly to their providers.

Practice Fusion planned to launch a public-facing healthcare provider directory portion of the Patient Fusion Web site in 2013. The directory would, among other things, allow current and prospective patients to read patient reviews of providers. To populate this Web site with reviews, starting on April 5, 2012, Practice Fusion sent emails to the patients of its healthcare provider clients soliciting those patients to take surveys to rate and review their provider. The email—and the survey itself—suggested that the health care provider was directly seeking the survey responses to improve the consumer's experience on future visits. Neither the email nor the survey clearly indicated that the reviews would be posted publicly. Practice Fusion solicited reviews for a full year—collecting information from over 600,000 patients during that time—before launching the review service on April 8, 2013, at which time all of the reviews previously collected were posted publicly on the Internet. Many of the reviews contained highly sensitive information, combined with identifying information, indicating that many patients likely thought they were communicating directly with their doctors, and did not intend for their feedback to be posted publicly.

The Commission's proposed complaint alleges that Practice Fusion violated Section 5(a) of the Federal Trade Commission Act from April 2012 through April 2013 by failing to adequately disclose that survey responses would be made publicly available on Patient Fusion's healthcare provider review Web site. This fact, according to the proposed complaint, would be material to consumers in deciding whether or how to respond to the survey. The Commission's complaint alleges that Practice Fusion's failure to adequately disclose this material information is a deceptive act or practice in violation of Section 5.

The proposed order contains provisions designed to prevent Practice Fusion from engaging in the same or similar acts or practices in the future. Part I of the proposed order prohibits Practice Fusion from misrepresenting the extent to which it uses, maintains, and protects the privacy and confidentiality of any covered information, including the extent to which covered information is made publicly available.

Part II of the proposed order requires Practice Fusion, prior to making any consumer's covered information publicly available, to (A) clearly and conspicuously disclose to the consumer, separate and apart from "privacy policy," "terms of use" page, or similar document, that such information is being made publicly available; and (B) obtain the consumer's affirmative express consent.

Part III of the proposed order prohibits Practice Fusion from displaying any healthcare provider review information obtained from consumers between April 5, 2012 and April 8, 2013. Part III of the proposed order also prohibits Practice Fusion from maintaining such information, except for review and retrieval by its healthcare provider customers, or their respective agents, contractors, assigns, or as permitted to comply with applicable law, regulation, or legal process.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires acknowledgment of the order and dissemination of the order now and in the future to persons with supervisory responsibilities relating to the subject matter of the order. Part V ensures notification to the FTC of changes in corporate status and mandates that Practice Fusion submit an initial compliance report to the FTC. Part VI requires Practice Fusion to retain documents relating to its compliance with the order for a five-year period. Part VII mandates that Practice Fusion make available to the FTC information or subsequent compliance reports, as requested. Part VIII is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–14091 Filed 6–14–16; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 151 0172]

Energy Transfer Equity, L.P. and The Williams Companies, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 11, 2016.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/energytransferequityconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "In the Matter of Energy Transfer Equity, L.P.,—Consent Agreement; File No. 151 0172" on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/energytransferequityconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write "In the Matter of Energy Transfer Equity, L.P.,—Consent Agreement; File No. 151 0172" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Brian J. Telpner (202–326–2782), Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 9, 2016), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 11, 2016. Write "In the Matter of Energy Transfer Equity, L.P.,—Consent Agreement; File No. 151 0172" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/energytransferequityconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write "In the Matter of Energy Transfer Equity, L.P.,—Consent Agreement; File No. 151 0172" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 11, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") with Energy Transfer Equity, L.P. ("ETE") and The Williams Company, Inc. ("Williams"). The Consent Agreement is designed to remedy the anticompetitive effects that would likely result from ETE's proposed acquisition of Williams.

Under the terms of the proposed Decision and Order ("Order") contained in the Consent Agreement, ETE must divest to a Commission-approved buyer Williams' ownership interest in Gulfstream Natural Gas System L.L.C. ("Gulfstream"), an interstate natural gas pipeline serving peninsular (central and southern) Florida. The Order also addresses competitive concerns arising from ETE's post-merger control over a Williams pipeline segment that serves as the origin for a new interstate pipeline that will begin serving Florida in 2017. The Order maintains the premerger bargaining position of the new pipeline to negotiate future capacity expansions over the Williams pipeline segment.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make the Order final.

II. The Parties and Other Entities

A. ETE

ETE is a master limited partnership controlling a family of companies that own and operate approximately 71,000 miles of natural gas, natural gas liquids, refined products, and crude oil pipelines. ETE has a 50 percent ownership interest in Florida Gas Transmission LLC ("FGT"), one of two interstate pipelines currently transporting natural gas to peninsular Florida.

B. Williams

Williams is an energy infrastructure company focusing primarily on natural gas and natural gas liquids infrastructure assets in North America.

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[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Its major holdings include natural gas transportation, gathering, treating, and processing assets in multiple natural gas-producing areas. Williams has a 50 percent ownership interest in Gulfstream, which is the other interstate pipeline currently transporting natural gas to peninsular Florida. Williams is also the sole owner of Transcontinental Gas Pipe Line Company, LLC ("Transco"), a large interstate pipeline system that extends from Texas, Louisiana, and the offshore Gulf of Mexico through the Atlantic seaboard and into the New York metropolitan area.

C. Sabal Trail

Sabal Trail Transmission, LLC ("Sabal Trail") is a new interstate pipeline that will begin transporting natural gas to parts of peninsular Florida in May 2017. Sabal Trail's sole access to natural gas sources will be via a leased segment on the Williams-owned Transco system. Sabal Trail and Transco are parties to a capacity lease agreement whereby Transco has agreed to expand the leased segment on its system in several phases—with each phase to provide a specific amount of new pipeline capacity—to support Sabal Trail's operations in peninsular Florida.

III. The Proposed Acquisition

ETE and several affiliates under its control entered into a merger agreement with Williams, dated September 28, 2015, pursuant to which Williams will be merged with and into Energy Transfer Corp LP, a newly created ETE affiliate that will survive the merger (the "Acquisition"). The combined entity will become the third largest energy company in North America, with a geographically diverse asset portfolio used in the transportation, processing, and storage of natural gas and natural gas liquids.

The Commission's Complaint alleges that the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition for the firm transportation of natural gas by interstate pipeline to locations in peninsular Florida.

IV. The Relevant Markets

Florida's largest natural gas shippers are electric power generation utilities, which use natural gas to generate electricity for distribution to Florida consumers and businesses. These shippers depend on the efficient, reliable, and cost-effective transportation of natural gas via interstate pipelines because Florida has virtually no in-state natural gas production and no natural gas storage.

The Commission's Complaint alleges that the relevant product market within which to analyze the Acquisition is the firm transportation of natural gas by interstate pipeline. Firm pipeline transportation guarantees shippers the right to a certain amount of pipeline capacity, which generally is not subject to interruption or curtailment by the pipeline. Because Florida natural gas shippers, especially electric utilities, require a constant and reliable source of natural gas, they could not meaningfully substitute non-firm transportation services even if the cost of firm pipeline transportation were to increase.

The Commission's Complaint alleges that the relevant geographic market in which to assess the competitive effects of the Acquisition is peninsular Florida, which includes pipeline delivery points in central and southern Florida.

Market concentration will significantly increase because of the Acquisition. Many natural gas delivery points in peninsular Florida are connected to (or reasonably can connect to) both FGT and Gulfstream. For shippers located at these delivery points, the Acquisition results in a pipeline monopoly. A small number of delivery points connect to (or reasonably can connect to) FGT, Gulfstream, and—by May 2017—Sabal Trail. For shippers located at these delivery points, the merger reduces competitive alternatives from three to two.

V. Effects of the Acquisition

The Acquisition likely would substantially lessen competition for the provision of firm natural gas pipeline transportation to delivery points in peninsular Florida. The Acquisition would eliminate competition between FGT and Gulfstream that historically has enabled Florida shippers to obtain lower transportation rates and better terms of service. Absent the Acquisition, competition between FGT and Gulfstream likely would continue to allow Florida shippers to negotiate better rates and non-price terms.

In addition, the Acquisition likely will change the incentives of Transco's owner to accommodate future capacity expansions of Sabal Trail via Transco. FGT can add relatively small amounts of capacity to its system more cost-effectively than can Gulfstream. Moreover, FGT's pipeline system overlaps with the proposed Sabal Trail system more extensively than does Gulfstream's system. If Sabal Trail cannot expand its capacity, shippers who cannot obtain new capacity on Sabal Trail will more likely turn to FGT for that capacity than to Gulfstream. Thus, unlike Williams, which had little or no incentive to deny Sabal Trail additional volumes on Transco, ETE will have an incentive to forestall expansions on Sabal Trail in order to capture those expansions on FGT.

VI. Entry Conditions

Entry into the relevant markets would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Barriers to entry are significant and include the high capital costs of constructing a new interstate pipeline and the substantial time needed to design, permit, and construct a new pipeline system. Moreover, constructing a new pipeline system would require commitments from shippers based on significant new market demand for natural gas. Such market demand is unlikely to accumulate for the foreseeable future.

VII. The Agreement Containing Consent Order

The proposed Order resolves the anticompetitive concerns described above by requiring ETE to divest Williams' ownership interest in Gulfstream and by restoring Sabal Trail's premerger bargaining power to negotiate future capacity expansions on Transco.

To preserve competition between FGT and Gulfstream, the proposed Order requires that, within 180 days of closing the Acquisition, ETE must divest Williams' 50 percent interest in Gulfstream to a Commission-approved buyer. Post-closing divestiture is appropriate because this ownership interest is a high-value, low-risk asset likely to generate substantial interest among more than one potentially acceptable buyer. Under the terms of the Order to Maintain Assets contained in the Consent Agreement, ETE must maintain Gulfstream in substantially similar condition until the divestiture process is complete, thereby preserving Gulfstream as a viable, competitive, and marketable asset.

Any acquirer of Williams' ownership interest in Gulfstream must receive prior approval from the Commission. The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed acquirer of divested assets must not itself present competitive problems.

The proposed Order also preserves Sabal Trail's future competitiveness by ensuring Sabal Trail's ability to negotiate additional Transco expansions. First, the proposed Order incorporates the capacity lease agreement between Transco and Sabal Trail, which reflects terms Transco and Sabal Trail reached when an independent and motivated commercial partner owned Transco. The proposed Order gives Sabal Trail additional flexibility and optionality in obtaining the phased capacity expansions already contemplated by the capacity lease agreement. The proposed Order terminates twelve years after it issues, in order to cover the entirety of ETE's obligations for the expansions currently outlined in the capacity lease agreement.

Second, the Order requires that, within one year of the closing of the Acquisition, ETE offer to amend the capacity lease agreement to allow Sabal Trail to request expansions for as long as an additional eight years after the last expansion currently in the capacity lease agreement. These provisions ensure that Sabal Trail has the same future expansion opportunities as would have existed if an independent Williams continued to own Transco.

ETE must offer future expansions on the same terms and conditions that Transco negotiated as an independent entity. For each requested expansion, ETE must inform Sabal Trail of the estimated expansion cost, using the same methodology for each that Transco uses in its normal course of business. ETE then is obligated to expand Transco as requested by Sabal Trail. However, to prevent Sabal Trail from requesting cost-prohibitive expansions—expansions that an independent Williams would not have agreed to—ETE retains the right to require Sabal Trail to pay for the capital costs of the expansion, in which case ETE would not charge Sabal Trail a lease fee for that particular expanded capacity.

The proposed Order does not obligate ETE to expand Transco if Sabal Trail does not have (or has not secured pre-construction commitments from shippers for) sufficient capacity to use the expansion to serve Florida. The Acquisition does not change the incentives of Transco's owner to deny capacity expansions to serve areas outside of Florida. Thus, without this limitation, the proposed Order could give Sabal Trail expansion rights it would have been unable to negotiate from an independent Transco.

The Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–14092 Filed 6–14–16; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0056; Docket 2016–0053; Sequence 23]

Information Collection; Report of Shipment

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension of an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning report of shipment.

DATES: Submit comments on or before August 15, 2016.

ADDRESSES: Submit comments identified by Information Collection 9000–0056, Report of Shipment, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0056, Report of Shipment". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0056, Report of Shipment" on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0056, Report of Shipment.

Instructions: Please submit comments only and cite Information Collection 9000–0056, Report of Shipment, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Acquisition Policy, by telephone at 202–501–1448 or *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Per FAR 47.208, military (and, as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of shipments en-route from contractors' plants. Generally, this notification is required only for classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments. It facilitates arrangements for transportation control, labor, space, and use of materials handling equipment at destination. Also, timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges. Unless otherwise directed by a contracting officer, a contractor shall send the notice to the consignee transportation office at least twenty-four hours before the arrival of the shipment.

B. Annual Reporting Burden

Respondents: 33.
Responses per Respondent: 303.
Annual Responses: 9,999.
Hours per Response: .167.
Total Burden Hours: 1,670.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

Dated: June 9, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–14119 Filed 6–14–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0853]

Tobacco Product Manufacturing Facility Visits

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Tobacco Products (CTP) is announcing an invitation for participation in its Tobacco Product Manufacturing Facility Visits. This program is intended to give FDA staff an opportunity to visit facilities involved in the manufacturing of newly deemed tobacco products and their components and parts, including any related laboratory testing, and to observe the manufacturing operations of the tobacco industry. The purpose of this document is to invite parties interested in participating in Tobacco Product Manufacturing Facility Visits to submit requests to CTP.

DATES: Submit either an electronic or written request for participation by August 15, 2016. See section IV of this document for information on requests for participation.

ADDRESSES: If your facility is interested in participating in Tobacco Product Manufacturing Facility Visits, please submit a request either electronically to *http://www.regulations.gov* or in writing to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Matthew Brenner, Center for Tobacco Products, Food and Drug Administration, Document Control Center, Bldg. 71, Rm. G335, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 877–287–1373, email: *CTPRegulations@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31; 123 Stat. 1776) was signed into law, amending the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and giving FDA authority to regulate tobacco product manufacturing, distribution, and marketing. The new provisions include, among other things, the authority to issue regulations related to tobacco product manufacturing practice in order to protect the public health and to assure that tobacco products are in compliance with the FD&C Act. Specifically, section 906(e) of the FD&C Act (21 U.S.C. 387f(e)) provides that in applying manufacturing restrictions to tobacco, the Secretary shall prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing, and storage of a tobacco product conform to current good manufacturing practice, or hazard analysis and critical control point methodology.

CTP is instituting Tobacco Product Manufacturing Facility Visits to provide FDA staff with the opportunity to:

- Observe tobacco product manufacturing operations—from the receipt of raw materials to the distribution of newly deemed tobacco products, and
- Learn about the manufacturing practices and processes unique to your facility and newly deemed tobacco products.

This program will also inform FDA staff as they implement the tobacco provisions of the FD&C Act.

II. Description of the Tobacco Product Manufacturing Facility Visits

In this program, groups of FDA staff plan to observe the following facilities and their operations:

- Manufacturing facilities, including establishments that process, package, label, and distribute different types of newly deemed tobacco products (*e.g.,* dissolvable products, gels, cigars, pipe tobacco, waterpipe tobacco products, and electronic nicotine delivery systems (ENDS) (including e-cigarettes, e-hookah, e-cigars, vape pens, advanced refillable personal vaporizers, and electronic pipes) and liquid nicotine and flavors) (see 81 FR 28973, May 10, 2016),
- Laboratory facilities that perform tobacco testing (whether third-party or in-house), and
- Manufacturing facilities for tobacco products for further manufacturing into finished tobacco products (including, but not limited to, components, parts, flavors, casings, e-liquids).

Please note that Tobacco Product Manufacturing Facility Visits are not intended to include or replace official FDA inspections of facilities to determine compliance with the FD&C Act; rather, these facility visits are meant to educate FDA staff and improve their understanding of the tobacco industry and its manufacturing operations.

III. Site Selection

CTP plans to select sites from one or more of each of the following categories:

- Dissolvable products,
- Gels,
- Cigars,
- Pipe tobacco,
- Waterpipe tobacco products,
- ENDS (including e-cigarettes, e-hookah, e-cigars, vape pens, advanced refillable personal vaporizers, and electronic pipes) and liquid nicotine and flavors,
- Tobacco laboratories,
- Importers of finished tobacco products,
- Distributors and wholesalers of regulated tobacco products, and/or
- Manufacturers of tobacco products for further manufacturing into finished tobacco products (including, but not limited to, components, parts, flavors, casings, e-liquids).

Final site selections will be based on the availability of CTP funds and resources for the relevant fiscal year, as well as the following factors, as applicable: (1) Compliance status of the requesting facility and affiliated firm; (2) whether the requesting facility or affiliated firm, if applicable, has a significant request or marketing application or submission pending with FDA; and (3) whether the requesting facility will be engaged in active manufacturing or processing during the proposed time of the visit. All travel expenses associated with Tobacco Product Manufacturer Facility Visits will be the responsibility of CTP.

IV. Requests for Participation

The request for participation should include the following identification information:

- The name and contact information (including address, phone number, and email) of your point of contact for the request;

- The physical address(es) of the site(s) for which you are submitting a request;
- The type of processes (*e.g.,* manufacturing, laboratory practices, mixing, packaging, labeling, and distribution activities) performed at your facility;
- The type of tobacco products tested, processed, or manufactured at your facility; and
- A proposed program agenda.

Identify requests for participation with the docket number found in brackets in the heading of this document. Received requests are available for public examination in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 9, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–14139 Filed 6–14–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0451]

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 042

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a publication containing modifications the Agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA Recognized Consensus Standards). This publication, entitled "Modifications to the List of Recognized Standards, Recognition List Number: 042" (Recognition List Number: 042), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit electronic or written comments concerning this document at any time. These modifications to the list of recognized standards are effective June 15, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2004–N–0451 for "Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 042." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 042.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of Recognition List Number: 042 is available on the Internet at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.* See section VI of this document for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 042 modifications and other standards related information. Submit written requests for a single hard copy of the document entitled "Modifications to the List of Recognized Standards, Recognition List Number: 042" to the Division of Industry and Consumer Education, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149.

FOR FURTHER INFORMATION CONTACT: Scott A. Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5514, Silver Spring, MD 20993, 301–796–6287, *standards@cdrh.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled "Recognition and Use of Consensus Standards." The notice described how FDA would implement its standards recognition program and provided the initial list of recognized standards.

Modifications to the initial list of recognized standards, as published in the **Federal Register**, can be accessed at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.*

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The Agency maintains hypertext markup language (HTML) and portable document format (PDF) versions of the list of FDA Recognized Consensus Standards. Both versions are publicly accessible at the Agency's Internet site. See section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to the List of Recognized Standards, Recognition List Number: 042

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the Agency will recognize for use in premarket submissions and other requirements for devices. FDA will incorporate these modifications in the list of FDA Recognized Consensus Standards in the Agency's searchable database. FDA will use the term "Recognition List Number: 042" to identify these current modifications.

In table 1, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others, if applicable; (2) the correction of errors made by FDA in listing previously recognized standards; and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III, FDA lists modifications the Agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
		A. Cardiovascular	
3–131	....	ANSI/AAMI/ISO 27185:2012, cardiac rhythm management devices—Symbols to be used with cardiac rhythm management device labels, and information to be supplied—general requirements.	Extent of recognition and Relevant guidance.
3–132	....	ISO 27185 First edition 2012–02–15, cardiac rhythm management devices—Symbols to be used with cardiac rhythm management device labels, and information to be supplied—general requirements.	Extent of recognition and Relevant guidance.
		B. General I (QS/RM)	
5–90	....	ISO 15223–1 Second Edition 2012–07–01, medical devices—symbols to be used with medical device labels, labelling, and information to be supplied—Part 1: General requirements.	Extent of recognition, Relevant guidance.
5–91	....	ANSI/AAMI/ISO 15223–1:2012, Medical devices—Symbols to be used with medical devices labels, labeling, and information to be supplied—Part 1: General requirements.	Extent of recognition and Relevant guidance.
		C. Material	
8–349	....	ASTM F2503–13 Standard Practice For Marking Medical Devices And Other Items For Safety In The Magnetic Resonance Environment.	Relevant guidance.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

III. Listing of New Entries

In table 2, FDA provides the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 042.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS

Recognition No.	Title of standard [1]	Reference No. and date
	A. General I	
5–102	Graphical symbols for use on equipment	IEC 60417:2002 DB.
5–103	Graphical symbols for use on equipment—Registered symbols	ISO 7000: Fifth edition 2014–01–15.
5–104	Graphical symbols for electrical equipment in medical practice	IEC/TR 60878 Ed. 3.0 b:2015.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

IV. List of Recognized Standards

FDA maintains the Agency's current list of FDA Recognized Consensus Standards in a searchable database that may be accessed directly at FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm*. FDA will incorporate the modifications and revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and revisions to the list of recognized consensus standards, as needed, in the **Federal Register**, once a year or more often if necessary. Beginning with Recognition List: 033, FDA no longer announces minor revisions to the list of recognized consensus standards such as technical contact person, devices affected, processes affected, Code of Federal Regulations citations, and product codes.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under section 514 of the FD&C Act by submitting such recommendations, with reasons for the recommendation, to *standards@cdrh.fda.gov*. To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

You may obtain a copy of "Guidance on the Recognition and Use of Consensus Standards" by using the Internet. The Center for Devices and Radiological Health (CDRH) maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page, *http://www.fda.gov/MedicalDevices*, includes a link to standards-related documents including the guidance and the current list of recognized standards. After publication in the **Federal Register**, this notice announcing "Modification to the List of Recognized Standards, Recognition List Number: 042" will be available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm*. You may access "Guidance on the Recognition and Use of Consensus Standards," and the searchable database for "FDA Recognized Consensus Standards," at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards*.

Dated: June 8, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13990 Filed 6–14–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Menu Labeling Public Workshops; Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meetings.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing two public meetings to discuss menu labeling requirements. We will announce an additional public meeting to be held in Oakland, California, in a separate **Federal Register** notice later this year. The purpose of the public meetings is to help the regulated industry comply with the requirements of the menu labeling final rule.

DATES: See "How to Participate in the Public Meetings" in the **SUPPLEMENTARY INFORMATION** section of this document for dates, times, and addresses of the public meetings, closing dates for advance registration, requesting special accommodations due to disability, and other information.

ADDRESSES: See "How to Participate in the Public Meetings" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about registering for this meeting or for special accommodations due to disability, contact Cindy de Sales, The Event Planning Group, 8720 Georgia Ave., Suite 801, Silver Spring, MD 20910, 240–316–3207, FAX: 240–652–6002, and email: *rsvp@tepgevents.com*.

For general questions about the public meetings, contact Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 1, 2014 (79 FR 71156), we published a final rule on nutrition labeling of standard menu items in restaurants and similar retail food establishments; the rule is codified at Title 21 of the *Code of Federal Regulations*, section 101.11. The final rule implements section 403(q)(5)(H) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 343(q)(5)(H)), which, in general, requires that restaurants and similar retail food establishments that are part of a chain with 20 or more locations, doing business under the same name, and offering for sale substantially the same menu items, provide calorie information for standard menu items (including food on display and self-service food), provide, upon request, additional written nutrition information for standard menu items, and comply with other requirements described in section 403(q)(5)(H) of the FD&C Act.

On December 18, 2015, the President signed the Consolidated Appropriations

Act, 2016 (Pub. L. 114–113). Section 747 of the Consolidated Appropriations Act states that none of the funds made available under the Consolidated Appropriations Act may be used to implement, administer, or enforce the final rule entitled "Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments" until 1 year after the date of publication of a Level 1 guidance with respect to nutrition labeling of standard menu items in restaurants and similar retail food establishments.

In the **Federal Register** of May 5, 2016 (81 FR 27067), we announced the availability of the guidance for industry entitled "A Labeling Guide for Restaurants and Retail Establishments Selling Away-From-Home Foods—Part II (Menu Labeling Requirements in Accordance with 21 CFR 101.11)." The guidance uses a question and answer format and is intended to help restaurants and similar retail food establishments covered by the final rule comply with the nutrition labeling requirements of the final rule. In accordance with the Consolidated Appropriations Act, 2016, enforcement of the final rule will commence May 5, 2017.

We have made education of the menu labeling requirements a high priority and are announcing two menu labeling workshops to educate interested members of the public, especially the regulated industry, about the menu labeling requirements. Interested persons can continue to submit general questions to *CalorieLabeling@fda.hhs.gov*.

II. Purpose and Format of the Public Meetings

The purpose of these public meetings is to help the regulated industry comply with the requirements of the menu labeling final rule. On the morning of day one of the meeting, we will present information on the menu labeling requirements. The afternoon of day one and all of day two will consist of consultation sessions with FDA staff where individual companies (limited to two members per company) may discuss their specific questions and concerns. Each consultation session is limited to 15 minutes to help ensure that enough time is available to accommodate each company that requests a consultation. We recommend that participants in the consultation session prepare their questions in advance due to the limited time available.

III. How To Participate in the Public Meetings

We encourage all persons who wish to attend the meeting to register in advance of the meeting and to indicate whether they are requesting a consultation session. There is no fee to register for the public meeting, and registration will be on a first-come, first-served basis. Early registration is recommended to facilitate planning of the consultation sessions and because seating is limited. We encourage you to use electronic registration if possible (see the address in table 1).

Table 1 provides information on participation in the public meetings.

TABLE 1—INFORMATION ON MENU LABELING MEETINGS

Activity	Date	Electronic address	Address
First public meeting	July 7 and 8, 2016, 8 a.m. to 4:30 p.m.		Harvey Wiley Building, 5100 Paint Branch Pkwy., College Park, MD 20740. Note: The Prince George's County Planning Board recently approved a request to change the street name from "Paint Branch Parkway" to "Campus Drive." This change is expected to occur on July 1, 2016.
Advance registration	by June 30, 2016	*http://www.cvent.com/d/zfq6sm*	We encourage you to use electronic registration if possible.[1]
Request special accommodations due to a disability.	by June 30, 2016		See **FOR FURTHER INFORMATION CONTACT**.
Second public meeting	September 27 and 28, 2016, 8 a.m. to 4:30 p.m.		Robert A. Young Federal Building, 1222 Spruce St., St. Louis, MO 63103.
Advance registration	by September 20, 2016.	*http://www.cvent.com/d/zfq6sm*	We encourage you to use electronic registration if possible.[1]
Request special accommodations due to a disability.	by September 13, 2016.		See **FOR FURTHER INFORMATION CONTACT**.

[1] You may also register via mail, fax, or email. Please include your name, title, firm name, address, and phone and fax numbers in your registration information and send to: Cindy de Sales, The Event Planning Group, 8720 Georgia Ave., Suite 801, Silver Spring, MD 20910, 240–316–3207, FAX: 240–652–6002, and email: *rsvp@tepgevents.com*.

IV. Transcripts

Transcripts of the workshop will not be prepared.

Dated: June 10, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–14138 Filed 6–14–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Immunology and Pathogenesis Study Section.

Date: July 7, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Mechanisms of Aging.

Date: July 7, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Thomas Beres, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 5201, MSC 7840, Bethesda, MD 20892, 301–435–1175, *berestm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biobehavioral Regulation Learning and Ethology.

Date: July 11, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mark Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–915–6298, *mark.lindner@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: HIV/AIDS Innovative Research Applications.

Date: July 13, 2016.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Barna Dey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, Bethesda, MD 20892, 301–451–2796, *bdey@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–16–004: Environmental Influences on Child Health Outcomes (ECHO) Pediatric Cohorts.

Date: July 14–15, 2016.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington, DC, 923 16th Street NW., Washington, DC 20006.

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Dermatology and Cell/Molecular Biology.

Date: July 15, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Baljit S. Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR13–390: Indo-US Collaborative Program in Affordable Medical Devices.

Date: July 15, 2016.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Craig Giroux, Ph.D., Scientific Review Officer, BST IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, Bethesda, MD 20892, 301–435–2204, *girouxcn@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 9, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14053 Filed 6–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Women's Health Initiative (NHLBI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 4, 2016, Pages: 19207–19208. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Heart, Lung and Blood Institute (NHLBI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Shari Ludlam, 6701 Rockledge Drive, MSC 7936, Bethesda, MD 20892, or call non-toll-free number (301) 435–6667, or Email your request to: *ludlams@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: The Women's Health Initiative, 0925–0414, Revision, Exp. 7/31/2016, National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH).

Need and Use of Information Collection: This proposal is to extend the Women's Health Initiative (WHI), which comprises a group of research studies that will address critical issues about the most common causes of frailty, disability, and death among post-menopausal women aged 50 to 79 years. This Initiative is comprised of two main investigational approaches: (1) A large clinical trial (CT) to evaluate the clinical efficacy of promising, but unproven preventive approaches for specific diseases common among older women; and (2) a companion observational study (OS) comprised of women ineligible or unwilling to participate in the CT, to evaluate risk factors for chronic diseases by following this large cohort of women and relating subsequent disease development to baseline assessments of historical, physical, and physiologic characteristics. The WHI provides new information on health and risk of disease among older post-menopausal women to inform development of approaches to disease prevention. The specific objectives of the OS are to provide reliable estimates of the extent to which known risk factors predict heart disease, cancers and fractures; identify new risk factors for these and other diseases in women; compare risk factors, presence of disease at the start of the study, and new occurrences of disease during the WHI in all study components; and create a future resource to identify biological indicators of disease, especially substances and factors found in the blood. Continued follow-up of medical outcome occurrences will enhance achievement of the WHI original goals and increase the range of scientific issues that can be examined. Specific biomarkers will be assessed based on current and future hypotheses related to clinical endpoints. The WHI study/protocol allows for analysis and presentation of results in aggregate form only, thus all data including biological samples are void of personal identifiers.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 10,796.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Medical History Update	Participants	40,203	1	7/60	4,690
Activities of Daily Life	Participants	40,203	1	6/60	4,020
Personal Information Update	Participants	40,203	1	3/60	2,010
Initial Notification of Death	Next of Kin	900	1	5/60	75
Initial Notification of Death	Physician/Office Staff	15	1	5/60	1
Total		41,118	121,524		10,796

Dated: June 9, 2016.

Valery Gheen,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2016–14057 Filed 6–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Stress and Resilience to Address Health Disparities in the United States.

Date: July 12, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carmen Moten, MPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7703, *cmoten@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 9, 2016

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14054 Filed 6–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; NIGMS Postdoctoral T32 Review.

Date: July 15, 2016.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikebr@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Support of Competitive Research (SCORE) applications.

Date: July 21, 2016.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN12K, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nina Sidorova, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.22, Bethesda, MD 20892–6200, 301–594–3663, *sidorova@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: June 9, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14056 Filed 6–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Human Ear Tissue Lab Resource.

Date: June 28, 2016.

Time: 12:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: June 9, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14055 Filed 6–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0301]

Navigation Safety Advisory Council; Vacancies

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Navigation Safety Advisory Council. The Navigation Safety Advisory Council provides advice and recommendations to the Secretary of Homeland Security, through the Commandant of the U.S. Coast Guard, on matters relating to maritime collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

DATES: Completed applications should reach the Coast Guard on or before August 15, 2016.

ADDRESSES: Applicants should send a cover letter expressing interest in an appointment to the Navigation Safety Advisory Council that identifies which membership category the applicant is applying under, along with a resume detailing the applicant's experience via one of the following methods:

- *By Email:* to *George.H.Detweiler@uscg.mil* (preferred);
- *By Mail:* Commandant (CG–NAV–2)/NAVSAC Attn: Mr. George Detweiler, Alternate Designated Federal Officer, Commandant (CG–NAV–2), U.S. Coast Guard, 2703 Martin Luther King Avenue SE., STOP 7418, Washington, DC 20593–7418; or
- *By Fax:* 202–372–1991.

FOR FURTHER INFORMATION CONTACT: Mr. George Detweiler, the Navigation Safety Advisory Council Alternate Designated Federal Officer, telephone 202–372–1566, fax 202–372–1991, or email *George.H.Detweiler@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Navigation Safety Advisory Council is a federal advisory committee authorized by 33 U.S.C. 2073 and chartered under the provisions of the Federal Advisory Committee Act, (Title 5 U.S.C. Appendix).

The Navigation Safety Advisory Council provides advice and recommendations to the Secretary of Homeland Security, through the Commandant of the U.S. Coast Guard, on matters relating to maritime collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

The Navigation Safety Advisory Council is expected to meet at least twice each year. All members serve at their own expense and receive no salary from the Federal Government, although travel reimbursement and per diem may be provided for called meetings.

The Coast Guard will consider applications for seven positions that will be vacant on November 4, 2016, in the following membership categories only:

a. Commercial vessel owners and operators;

b. Professional mariners;

c. Recreational boaters;

d. Recreational Boating Industry; and

e. State agencies responsible for vessel or port safety.

To be eligible, applicants should have experience in one of the categories listed above. Members serve terms of office of up to three (3) years. Members are limited to serving no more than two (2) consecutive terms. In the event the Navigation Safety Advisory Council terminates, all appointments to the Council terminate.

Registered lobbyists are not eligible to serve on federal advisory committees in an individual capacity. See "Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards and Commissions" (79 FR 47482, August 13, 2014). Registered lobbyists are lobbyists required to comply with provisions contained in 2 U.S.C. 1605.

The Department of Homeland Security does not discriminate in selecting Council members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are interested in applying to become a member of the Council, submit your complete application package to Mr. George Detweiler, the Navigation Safety Advisory Council Alternate Designated Federal Officer via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section of this notice.

All email submittals will receive email receipt confirmation.

Dated: June 10, 2016.

David C. Barata,

Captain, U.S. Coast Guard, Acting Director, Marine Transportation Systems.

[FR Doc. 2016–14154 Filed 6–14–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0011]

Individuals and Households Program Unified Guidance

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on the *Individuals and Households Program Unified Guidance.*

DATES: Comments must be received by August 1, 2016.

ADDRESSES: Comments must be identified by docket ID FEMA–2016–0011 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 8NE, 500 C Street SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Johnathan Torres, Individual Assistance Division, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202–212–1079) or (*FEMA-IHPUG-Comments@fema.dhs.gov*).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the "Privacy Notice" link in the footer of *www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESSES** section. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed guidance is available in docket ID FEMA–2016–0011. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, 8NE, 500 C Street SW., Washington, DC 20472.

II. Background

FEMA is requesting comment on its proposed *Individuals and Households Program Unified Guidance* describing the policies for the Individuals and Households Program. The proposed guidance compiles FEMA policy for each type of assistance under the Individuals and Households Program into one comprehensive document and is intended to serve as a singular resource for States, Territorial, Indian Tribal Governments, and other entities who assist disaster survivors with post-disaster recovery. The proposed guidance does not have the force or effect of law.

FEMA seeks comment on the proposed guidance, which is available online at *http://www.regulations.gov* in docket ID FEMA–2016–0011. Based on the comments received, FEMA may make appropriate revisions to the proposed guidance. Although FEMA will consider any comments received in the drafting of the final guidance, FEMA will not provide a response to comments document. When or if FEMA issues final guidance, FEMA will publish a notice of availability in the **Federal Register** and make the final guidance available at *http://www.regulations.gov.* The final guidance would not have the force or effect of law.

Authority: 42 U.S.C. 5174.

Matthew Payne,

Director of the Policy Division, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2016–14118 Filed 6–14–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Cybersecurity Information Sharing Act of 2015 Final Guidance Documents—Notice of Availability

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Notice of availability.

SUMMARY: DHS is announcing the availability of Cybersecurity Information Sharing Act of 2015 (CISA) Final Guidance Documents jointly issued with the Department of Justice (DOJ) in compliance with the Act, which authorizes the voluntary sharing and receiving of cyber threat indicators and defensive measures for cybersecurity purposes, consistent with certain protections, including privacy and civil liberty protections.

ADDRESSES: The CISA final guidance documents may be found on *www.us-cert.gov/ais.*

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, email *cisaimplementation@hq.dhs.gov* or call Matthew Shabat at (703) 235–5338. Questions may also be directed by mail to Matthew Shabat, 245 Murray Lane SW., Mail Stop 0610, Washington, DC 20528–0610.

SUPPLEMENTARY INFORMATION: The CISA requires the Secretary of DHS and the Attorney General to jointly develop and make publicly available—

- guidance to assist non-Federal entities and promote sharing of cyber threat indicators with the Federal Government;
- interim and final guidelines for the protection of privacy and civil liberties; and
- interim and final procedures related to the receipt of cyber threat indicators and defensive measures by the Government, which happen principally through the existing DHS-operated Automated Indicator Sharing (AIS) initiative, web form and email communications to DHS, and through direct submissions to Federal agencies.

Authority and Background

On December 18, 2015, the President signed into law the Consolidated Appropriations Act, 2016, Public Law 114–113, which included at Division N, Title I the Cybersecurity Information Sharing Act of 2015 (CISA). Congress designed CISA to establish a voluntary cybersecurity information sharing process that encourages public and private sector entities to share cyber threat indicators and defensive measures while protecting privacy and civil liberties. The CISA requires various Executive Branch agencies to coordinate and create, within 60 days of enactment (*i.e.,* not later than February 16, 2016), four guidance documents to facilitate this voluntary cybersecurity information sharing process. The CISA also requires the final versions of two of these documents to be issued and made publicly available within 180 days of enactment (*i.e.,* not later than June 15, 2016). *See generally* Public Law 114–113, Div. N, Title I secs. 103, 105).

Overview of the 180 Day Guidance Required Under CISA

The Cybersecurity Information Sharing Act sec. 105(a)(2) requires the Secretary of DHS and the Attorney General, in consultation with the heads of designated Federal entities,[1] to jointly develop and issue interim (within 60 days of enactment) and final (within 180 days of enactment) policies and procedures relating to the receipt of cyber threat indicators and defensive measures by the Federal Government. These internal operational procedures describe general rules applicable to DHS and other Federal agencies and the operative processes of the DHS AIS system, including the statutory requirement for Federal agencies that receive cyber threat indicators and defensive measures to share them with other appropriate agencies. DHS and DOJ updated this guidance.

Section 105(b) of the CISA requires the Secretary of Homeland Security and the Attorney General, in consultation with the Department Heads and Chief Privacy and Civil Liberty Officers of the designated Federal entities and such private entities with industry expertise as the Attorney General and the Secretary consider relevant, to jointly develop and make publicly available interim (within 60 days of enactment) and final (within 180 days of enactment) guidelines relating to privacy and civil liberties that govern the receipt, retention, use, and dissemination of cyber threat indicators by a Federal entity. These privacy and civil liberties guidelines are consistent with the Fair Information Practice Principles (FIPPs) set forth in Appendix A of the "National Strategy for Trusted Identities in Cyberspace," published by the President in April 2011. DHS and DOJ updated this guidance based on feedback from within the Federal Government, the privacy advocacy community, and other relevant private entities.

Overview of Updates to Non-Federal Entity Sharing Guidelines

Section 105(a)(4) of the CISA requires the Secretary of Homeland Security and the Attorney General to jointly develop and make publicly available guidance to assist non-Federal entities with sharing cyber threat indicators with Federal entities. This guidance includes explanations of how non-Federal entities can identify and share cyber threat indicators and defensive measures with the Federal Government in accordance with CISA and describes the protections non-Federal entities receive under CISA for sharing cyber threat indicators and defensive measures, including targeted liability protection and other statutory protections. As required by CISA, DHS initially made this guidance available on February 16, 2016 at *www.us-cert.gov/ais.* Based on stakeholder input and feedback, DHS and DOJ have further updated this guidance.

Issuance of Agency Guidance Required Under CISA

The CISA-mandated final procedures and guidance, as well as an updated version of the non-federal entity sharing guidance, may be found at *www.us-cert.gov/ais.*

Dated: June 6, 2016.

Andy Ozment,

Assistant Secretary, Department of Homeland Security.

[FR Doc. 2016–13742 Filed 6–14–16; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2016–N095; FXES11120800000–167–FF08ECAR00]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit Application; Proposed Low-Effect Habitat Conservation Plan and Associated Documents; Community of San Pedro, City of Los Angeles, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Rolling Hills Preparatory School (applicant) for a 25-year incidental take permit for the endangered Palos Verdes blue butterfly pursuant to the Endangered Species Act of 1973, as amended (Act). We are requesting comments on the permit application and on the preliminary determination that the proposed Habitat Conservation Plan qualifies as a "low-effect" Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and the associated low-effect screening form, which are also available for public review.

DATES: Written comments should be received on or before July 15, 2016.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *U.S. Mail:* Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.
- *Fax:* Field Supervisor, 760–431–9624.

Obtaining Documents: To request copies of the application, proposed HCP, and EAS, contact the Service immediately, by telephone at 760–431–9440 or by letter to the Carlsbad Fish and Wildlife Office (see **ADDRESSES**). Copies of the proposed HCP and EAS also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: 760–431–9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Rolling Hills Preparatory School (applicant) for a 25-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.,* Act). The application addresses the potential "take" of the endangered Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*) in the course of activities associated with the construction of educational facilities and active habitat management for the Palos Verdes blue butterfly, in the Community of San Pedro, City of Los Angeles, Los Angeles County, California. A conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the proposed Habitat

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[1] The CISA defines *Appropriate Federal Entities* as the Departments of Commerce, Defense, Energy, Homeland Security, Justice, Treasury, and the Office of the Director of National Intelligence. *See* CISA sec. 102(3).

Conservation Plan (HCP) by the applicant.

We are requesting comments on the permit application and on the preliminary determination that the proposed HCP qualifies as a "low-effect" HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and associated low-effect screening form, which are also available for public review.

Background

Section 9 of the Act and its implementing Federal regulations prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the Act as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct" (16 U.S.C. 1538). "Harm" includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. "Incidental take" is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The applicant requests a 25-year permit under section 10(a)(1)(B) of the Act. If we approve the permit, the applicant anticipates taking Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*) as a result of permanent impacts to 0.68 acre (ac) of habitat the species uses for breeding, feeding, and sheltering. The take from permanent impacts would be incidental to the applicant's activities associated with the construction of educational facilities within the former Palos Verdes Naval Housing Area in the Community of San Pedro, City of Los Angeles, California. Additional take due to temporary impacts may also occur within no more than 0.50 ac annually. The take from temporary impacts would be incidental to the applicant's habitat management activities within the 10.47-acre Reserve established for the Palos Verdes blue butterfly.

To minimize take of Palos Verdes blue butterfly by the project and offset impacts to its habitat, the applicant proposes to remove a paved parking lot within the Reserve and restore the site with 0.84 acre of Palos Verdes blue butterfly habitat. In addition, the applicant has committed to implementing a Habitat Management Plan (Appendix 1 in the HCP). The Habitat Management Plan identifies specific goals and objectives that will maintain or improve habitat value for the Palos Verdes blue butterfly. Finally, the applicant will continue to implement a series of measures developed to minimize indirect impacts to the Reserve from irrigation, lighting, and trespass as described in the HCP.

Proposed Action and Alternatives

The Proposed Action consists of the issuance of an incidental take permit for implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the Palos Verdes blue butterfly. If we approve the permit, take of Palos Verdes blue butterfly would be authorized for the applicant's activities associated with the construction of educational facilities and ongoing habitat management. In the proposed HCP, the applicant considers a No Action Alternative. Under the No Action Alternative, no incidental take of Palos Verdes blue butterfly would occur, and there would be no long-term commitment to manage the Reserve to the standards described in the Habitat Management Plan.

Our Preliminary Determination

The Service has made a preliminary determination that the approval of the HCP and issuance of an incidental take permit qualify for categorical exclusion under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215), and that the HCP qualifies as a "low-effect" plan as defined by the *Habitat Conservation Planning Handbook* (November 1996).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

(1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;

(2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and

(3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

However, based upon our review of public comments that we receive in response to this notice, this preliminary determination may be revised.

Next Steps

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the Act by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of Palos Verdes blue butterfly.

Public Comments

If you wish to comment on the permit application, proposed HCP, and associated documents, you may submit comments by any of the methods noted in the **ADDRESSES** section.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

G. Mendel Stewart,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2016–14126 Filed 6–14–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO250000.L12200000.PM0000]

Renewal of Approved Information Collection; Control No. 1004–0119

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act, the Bureau of Land Management (BLM) invites public comments on, and plans to request approval to continue, the collection of information needed to evaluate and process applications for commercial, competitive, and organized group recreational uses of the public lands, and individual use of special areas. The Office of Management and Budget (OMB) has assigned control number 1004–0119 to this information collection.

DATES: Please submit comments on the proposed information collection by August 15, 2016.

ADDRESSES: Comments may be submitted by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate "Attn: 1004–0119" regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: David Ballenger, at 202–912–7642. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to leave a message for Mr. Ballenger.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies an information collection that the BLM plans to submit to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany our submission of the information collection requests to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection:

Title: Permits for Recreation on Public Lands (43 CFR part 2930).

OMB Control Number: 1004–0119.

Summary: This notice pertains to an information collection that is necessary for the management of recreation on public lands. The BLM is required to manage commercial competitive and organized group recreational uses of the public lands, and individual use of special areas. This information allows the BLM to collect the required information to authorize and collect fees for recreation use on public lands. The currently approved information collection consists of the collection of non-form information in accordance with 43 CFR part 2930, and Form 2930–1 (Special Recreation Permit Application). Responses are required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Forms: Form 2930–1, Special Recreation Permit Application.

Description of Respondents: Applicants for recreational use of public lands managed by the BLM.

Estimated Annual Responses: 1,376.

Estimated Annual Burden Hours: 5,504 hours (based on 4 hours per response and 1,376 responses).

Estimated Annual Non-Hour Costs: Respondents are not required to purchase additional computer hardware or software to comply with this information collection. Individual states and offices can charge an application fee to defray processing costs. The BLM estimated annual non-hour cost based on current application fees is $5,265.

Anna Atkinson,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2016–14093 Filed 6–14–16; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR936000.L14400000.ET0000.16XL1109AF; HAG 16–0086 OR–51891]

Notice of Proposed Withdrawal Extension for Edson Creek Park and Opportunity for Public Meeting, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary of the Interior for Land and Minerals Management proposes to extend the duration of Public Land Order (PLO) No. 7246 for an additional 20-year term. PLO No. 7246 withdrew 44.48 acres of public land from settlement, sale, location, or entry under the general land laws, including the United States mining laws, but not from the mineral leasing laws, to protect the Edson Creek Park recreation site in Curry County, Oregon. Public Land Order No. 7246 will expire on February 19, 2017, unless extended. This notice gives the public an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and public meeting requests must be received by September 13, 2016.

ADDRESSES: Comments and meeting requests should be sent to the Bureau of Land Management (BLM) Oregon/Washington State Director, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Jacob Childers, BLM Oregon/Washington State Office at 503–808–6225. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has filed an application to extend the withdrawal established by PLO No.7246 for an additional 20-year term, subject to valid existing rights. The Assistant

Secretary for Land and Minerals Management has approved the BLM's petition/application for a proposed withdrawal extension. Public Land Order No. 7246 (62 FR 7796 (1997)) is incorporated herein by reference. The area withdrawn by PLO No. 7246 contains 44.48 acres in Curry County, Oregon.

The purpose for which the withdrawal was originally established, to protect the investment of funds and infrastructure at the Edson Creek Park recreation site, still exists.

The use of right-of-way, interagency agreement, or cooperative agreement would not adequately protect the public recreation site at Edson Creek Park. There are no alternative sites that can be considered because the land described is the only land that encompasses the Edson Creek Park.

The BLM would not need to acquire water rights to fulfill the purpose of the requested withdrawal extension.

Records related to the application may be examined by contacting Jacob Childers at the address or phone number listed above.

For a period until September 13, 2016, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Oregon/Washington State Office State Director at the address indicated above.

Comments, including names and street addresses of respondents, will be available for public review at the address indicated above during regular business hours. Be advised that your entire comment—including your personal identifying information—may be made publicly available. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM State Director at the address indicated above by September 13, 2016. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

This extension application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Leslie A. Frewing,

Acting Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2016–14090 Filed 6–14–16; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

Proposed Information Collection; Comment Request; Miscellaneous Tariff Bill (MTB) Petition Submission and Comment Forms

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the U.S. International Trade Commission (Commission) hereby gives notice that it plans to submit a request for approval of two forms to the Office of Management and Budget for review and requests public comment on its draft collection.

DATES: To ensure consideration, written comments must be submitted on or before August 16, 2016.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written comments should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436 and filed electronically on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

Written Comments: You may submit comments, identified by docket number MISC–034. All submissions should be addressed to the Secretary and must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802).

Additional Information: Copies of the forms, supporting documents, and previously submitted comments may be downloaded from the Commission Web site at *http://www.usitc.gov/mtbps.* This information may also be obtained from contact Jennifer Rohrbach, USITC MTB Program Manager, Office of Operations (*jennifer.rohrbach@usitc.gov* or 202–205–2088) or Philip Stone, Office of Industries MTB Coordinator (*philip.stone@usitc.gov* or 202–205–3424). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Web site (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Purpose of Information Collection: The information requested by these forms is for use by the Commission in connection with evaluating miscellaneous tariff petitions submitted under the authority of American Manufacturing Competitiveness Act of 2016 (Pub. L. 114–159 approved May 20, 2016). Section 3 of this Act establishes a process for the submission and consideration of petitions and public comments for duty suspensions and reductions for imported goods in the Harmonized Tariff Schedule of the United States. The collection periods are 60-day periods starting October 15, 2016 and October 15, 2019.

Summary of Proposal:

(1) Number of forms submitted: 2.

(2) Title of forms: Miscellaneous Tariff Petition Submission Form and Miscellaneous Tariff Petition Comment Form.

(3) Type of request: New.

(4) Frequency of use: Twice.

(5) Description of affected industry: Domestic firms.

(6) Estimated number of petitioners and commenters: up to 5,000 petitions; 14,000 comments.

(7) Estimated total number of hours to complete the form: 5 hours for compiling information and submitting petitions and 0.5 hours to draft and submit comments.

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

SUPPLEMENTARY INFORMATION:

I. *Abstract:* Duty rates on imported goods are established by Congress in the Harmonized Tariff Schedule of the United States (HTS). Temporarily duty suspensions and reductions are set forth in chapter 99, subchapter II of the HTS, although no such suspensions or reductions are currently in effect. In large part due to the Commission's role in maintaining and publishing the official HTS, pursuant to the Omnibus Trade and Competitiveness Act of 1988, the Commission has supplied memoranda containing factual information concerning individual bills introduced in many sessions of Congress to seek such duty suspensions or reductions.

The new Act referenced above requires the Commission to establish a process to receive petitions that will take the place of individual miscellaneous tariff bills, and specifies the contents of such petitions. The Act also provides that these petitions must be made available on the Commission's Web site so that public comment on each one may be filed. The Act specifies the contents of Commission preliminary and final reports and requires the Commission to make several determinations concerning the petitions. Lastly, the Act requires the Commission to make particular recommendations concerning the petitions and provide the necessary information to Congress that will permit the Congress to decide which such petitions should be included in a miscellaneous tariff bill. The Act specifies the schedule for conducting each cycle of collections of petitions and for the Commission to submit a report to the House Committee on Ways and Means and the Senate Committee on Finance containing information and its determinations.

II. *Method of Collection:* Each interested party will be required to establish a user web account on the Commission Web site to submit a petition requesting the creation or renewal of miscellaneous tariff provisions in the HTS comment on a previously submitted petition.

III. *Request for Comments:* Comments are invited on (1) whether the proposed collection of information is necessary; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

The draft forms and other supplementary documents may be downloaded from the USITC Web site at *http://www.usitc.gov/mtbps.*

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

By order of the Commission.

Issued: June 10, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–14169 Filed 6–14–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Longshore and Harbor Workers' Compensation Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation (OWCP) is soliciting comments concerning the proposed collection: Securing Financial Obligations under the Longshore and Harbor Workers' Compensation Act and its Extension (LS-276, LS–275–IC and LS–275–SI) A copy of the proposed information collection request can be obtained by contacting the office listed below in the address section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 15, 2016.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3233, Washington, DC 20210 telephone/fax (202) 354–9647, Email *Ferguson.Yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background: The Longshore and Harbor Workers' Compensation Act (LHWCA) requires covered employers to secure the payment of compensation under the Act and its extensions by purchasing insurance from a carrier authorized by the Secretary of Labor to write Longshore Act Insurance, or by becoming authorized self-insured employers (33 U.S.C. 932 *et seq*). Each authorized insurance carrier (or carrier seeking authorization) is required to establish annually that its Longshore obligations are fully secured either through an applicable state guaranty (or analogous) fund, a deposit of security with the Division of Longshore and Harbor Workers' Compensation (DLHWC), or a combination of both. Similarly, each authorized self-insurer (or employer seeking authorization) is required to fully secure its Longshore Act obligations by depositing security with DLHWC. These requirements are designed to assure the prompt and continued payment of compensation and other benefits by the responsible carrier or self-insurer to injured workers and their survivors. Forms LS–276, Application for Security Deposit Determination; LS–275–IC, Agreement and Undertaking (Insurance Carrier); and LS–275–SI, Agreement and Undertaking (Self-insured Employer) are used to cover the submission of information by insurance carriers and self-insured employers regarding their ability to meet their financial obligations under the Longshore Act and its extensions. This information collection is currently approved for use through October 31, 2016.

II. Review Focus: The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the approval for the extension of this currently-approved information collection in order to carry out its responsibility to ensure that a carrier's LHWCA obligations are sufficiently secured and, if necessary, to deposit security in an amount set by OWCP. This procedure will ensure the prompt and continued payments of compensation and medical benefits to injured workers and help protect the Longshore special funds assets from consequences flowing from insurance carriers' insolvencies.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Request for Earnings Information.

OMB Number: 1240–0005.

Agency Number: LS–276, LS–275–IC and LS–275–SI.

Affected Public: Business or other for-profit, Not-for-profit institution.

Total Respondents: 569.

Total Annual Responses: 686.

Estimated Total Burden Hours: 472.

Estimated Time per Response: 15 minutes to 60 minutes.

Frequency: Annually.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $343.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 9, 2016.

Yoon Ferguson

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2016–14161 Filed 6–14–16; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy; Advisory Committee on Increasing Competitive Integrated Employment for Individuals With Disabilities; Notice of Meeting

The Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the Committee) was mandated by section 609 of the Rehabilitation Act of 1973, as amended by section 461 of the Workforce Innovation and Opportunity Act. The Secretary of Labor established the Committee on September 15, 2014 in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2. The purpose of the Committee is to study and prepare findings, conclusions and recommendations for Congress and the Secretary of Labor on (1) ways to increase employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities in competitive, integrated employment; (2) the use of the certificate program carried out under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)); and (3) ways to improve oversight of the use of such certificates.

The Committee is required to meet no less than eight times. It is also required to submit a final report to: The Secretary of Labor; the Senate Committee on Health, Education, Labor and Pensions; and the House Committee on Education and the Workforce by September 15, 2016. The Committee terminates one day after the submission of the final report.

The next meeting of the Committee will take place on Wednesday, July 20, 2016, and Thursday, July 21, 2016. The meeting will be open to the public on Wednesday, July 20th from 9:30 a.m. to 4:00 p.m. Eastern Daylight Time (EDT). On Thursday, July 21st, the meeting will be open to the public from 9:00 a.m. to 12:30 p.m. EDT. The meeting will take place at the U.S. Access Board, 1331 F Street NW., Suite 800, Washington, DC 20004–1111.

On July 20th and 21st, the Committee will review, discuss, and finalize the latest draft of the final report. The Committee will also hear from a panel of experts regarding the most recent developments in increasing competitive integrated employment at the state level. In addition, a representative of the Department will thank the Committee members for their work.

Members of the public who wish to address the Committee on the final report or other Committee related matters during the public comment period of the meeting on Wednesday, July 20th between 11:45 a.m. and 12:15 p.m., EDT, should send their name, their organization's name (if applicable) and any additional materials (such as a copy of the proposed testimony) to David Berthiaume at *Berthiaume.David.A@dol.gov* or call Mr. Berthiaume at (202) 693–7887 by Friday, July 8th. Members of the public will have the option of addressing the Committee in person or remotely by phone. If we receive more requests than we can accommodate during the public comment portion of the meeting, we will select a representative sample to speak, and the remainder will be permitted to file written statements. Individuals with disabilities who need accommodations should also contact Mr. Berthiaume at the email address or phone number above.

Organizations or members of the public wishing to submit comments may do so by using the form found at: *www.acicieid.org/comments.* All comments received prior to July 8, 2016, will be forwarded to the Committee in advance of the July meeting. Members of the public may also submit comments in writing on or before July 8, 2016, to David Berthiaume, Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, U.S. Department of Labor, Suite S–1303, 200 Constitution Avenue NW., Washington, DC 20210. *Please ensure that any written submission is in an accessible format or the submission will be returned. Written* statements deemed relevant by the Committee and received on or before July 8, 2016, will be included in the record of the meeting. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.

Jennifer Sheehy,

Deputy Assistant Secretary, Office of Disability Employment Policy.

[FR Doc. 2016–14158 Filed 6–14–16; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health: Subcommittee on Evidentiary Requirements for Part B Lung Disease

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Announcement of meeting of the Subcommittee on Evidentiary Requirements for Part B Lung Disease of the Advisory Board on Toxic Substances and Worker Health (Advisory Board) for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

SUMMARY: The subcommittee will meet via teleconference on June 29, 2016, from 10:00 a.m. to 2:00 p.m. Eastern Time.

For Press Inquiries Contact: For press inquiries: Ms. Amanda McClure, Office of Public Affairs, U.S. Department of Labor, Room S–1028, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–4672; email *mcclure.amanda.c@dol.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Board is mandated by Section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015). The purpose of the

Advisory Board is to advise the Secretary with respect to: (1) The Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; and (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency. The Advisory Board sunsets on December 19, 2019. This subcommittee is being assembled to gather data and begin working on advice under Area #3, Evidentiary Requirements for Part B lung conditions.

The Advisory Board operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and its implementing regulations (41 CFR part 102–3).

Agenda: The tentative agenda for the Subcommittee on Evidentiary Requirements for Part B Lung Disease meeting includes:

- Defining the issues and scope of the subcommittee's topic area: Evidentiary requirements for lung disease claims under EEOICPA's Part B;
- Defining data and informational needs (and review) for the topic area;
- Drafting the initial work plan with a timetable.

OWCP transcribes Advisory Board subcommittee meetings. OWCP posts the transcripts on the Advisory Board Web page, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* along with written comments and other materials submitted to the subcommittee or presented at subcommittee meetings.

Public Participation, Submissions, and Access to the Public Record

Subcommittee meeting: The subcommittee will meet via teleconference on Wednesday, June 29, 2016, from 10:00 a.m. until 2:00 p.m. Eastern Time. Advisory Board subcommittee meetings are open to the public. The teleconference number and other details for listening to the meeting will be posted on the Advisory Board's Web site no later than 72 hours prior to the meeting. This information will be posted at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

Requests for special accommodations: Please submit requests for special accommodations to participate in the subcommittee meeting by email, telephone, or hard copy to Ms. Carrie Rhoads, OWCP, Room S–3524, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 343–5580; email *EnergyAdvisoryBoard@dol.gov.*

Submission of written comments for the record: You may submit written comments, identified by the subcommittee name and the meeting date of June 29, 2016, by any of the following methods:

- *Electronically:* Send to: *EnergyAdvisoryBoard@dol.gov* (specify in the email subject line, "Subcommittee on Part B Lung Conditions").
- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW., Washington, DC 20210. Due to security-related procedures, receipt of submissions by regular mail may experience significant delays.

Comments must be received by June 22, 2016. OWCP will make available publically, without change, any written comments, including any personal information that you provide. Therefore, OWCP cautions interested parties against submitting personal information such as Social Security numbers and birthdates.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available on the Advisory Board's Web page at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

FOR FURTHER INFORMATION CONTACT: You may contact Antonio Rios, Designated Federal Officer, at *rios.antonio@dol.gov,* or Carrie Rhoads, Alternate Designated Federal Officer, at *rhoads.carrie@dol.gov,* U.S. Department of Labor, 200 Constitution Avenue NW., Suite S–3524, Washington, DC 20210, telephone (202) 343–5580. This is not a toll-free number.

Signed at Washington, DC, this 8th day of June 2016.

Leonard J. Howie III,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2016–14159 Filed 6–14–16; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 11 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: All meetings are Eastern time and ending times are approximate:

Theater and Musical Theater (review of applications): This meeting will be closed.
Date and time: July 7, 2016; 1:00 p.m. to 3:00 p.m.
Theater and Musical Theater (review of applications): This meeting will be closed.
Date and time: July 7, 2016; 4:00 p.m. to 6:00 p.m.
Museums (review of applications): This meeting will be closed.
Date and time: July 12, 2016; 11:30 a.m. to 1:30 p.m.
Museums (review of applications): This meeting will be closed.
Date and time: July 12, 2016; 2:30 p.m. to 4:30 p.m.
Museums (review of applications): This meeting will be closed.
Date and time: July 13, 2016; 2:30 p.m. to 4:30 p.m.
Arts Education (review of applications): This meeting will be closed.
Date and time: July 14, 2016; 1:30 p.m. to 3:30 p.m.
Creativity Connects (review of applications): This meeting will be closed.
Date and time: July 19, 2016; 11:00 a.m. to 1:00 p.m.
Creativity Connects (review of applications): This meeting will be closed.
Date and time: July 19, 2016; 3:00 p.m. to 5:00 p.m.
Creativity Connects (review of applications): This meeting will be closed.
Date and time: July 20, 2016; 11:00 a.m. to 1:00 p.m.
Arts Education (review of applications): This meeting will be closed.
Date and time: July 20, 2016; 1:30 p.m. to 3:30 p.m.
Arts Education (review of applications): This meeting will be closed.
Date and time: July 21, 2016; 1:30 p.m. to 3:30 p.m.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov,* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Dated: June 10, 2016.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2016–14137 Filed 6–14–16; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–58 and 50–263; NRC–2016–0115]

Xcel Energy, Monticello Nuclear Generating Plant Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a request submitted by Xcel Energy on September 29, 2015, from meeting Technical Specification (TS) 1.2.5 of Attachment A of Certificate of Compliance (CoC) No. 1004, Amendment No. 10, which requires that all dry shielded canister (DSC) closure welds, except those subjected to full volumetric inspection, shall be dye penetrant tested in accordance with the requirements of American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code Section III, Division 1, Article NB–5000. This exemption applies to one loaded Standardized NUHOMS® 61BTH, DSC 16 (DSC 16), at the Monticello Nuclear Generating Plant (MNGP) Independent Spent Fuel Storage Installation (ISFSI).

ADDRESSES: Please refer to Docket ID NRC–2016–0115 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0115. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Christian Jacobs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6825; email: *Christian.Jacobs@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Northern States Power Company-Minnesota, doing business as Xcel Energy (Xcel Energy, or the applicant) is the holder of Facility Operating License No. DPR–22, which authorizes operation of the Monticello Nuclear Generating Plant (MNGP), Unit No. 1, in Wright County, Minnesota, pursuant to part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), "Domestic Licensing of Production and Utilization Facilities." The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect.

Consistent with 10 CFR part 72, subpart K, "General License for Storage of Spent Fuel at Power Reactor Sites," a general license is issued for the storage of spent fuel in an ISFSI at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50. The applicant is authorized to operate a nuclear power reactor under 10 CFR part 50, and holds a 10 CFR part 72 general license for storage of spent fuel at the Monticello Nuclear Generating Plant ISFSI. Under the terms of the general license, the applicant stores spent fuel at its ISFSI using the Transnuclear, Inc. (TN) Standardized NUHOMS® dry cask storage system Certificate of Compliance (CoC) No. 1004, Amendments No. 9 and No. 10. As part of the dry storage system, the DSC (of which the closure welds are an integral part) ensures that the dry storage system can meet the functions of criticality safety, confinement boundary, shielding, structural support, and heat transfer.

II. Request/Action

The applicant has requested an exemption from the requirements of 10 CFR 72.212(b)(3) and 10 CFR 72.212(b)(11) that require compliance with the terms, conditions, and specifications of CoC No. 1004, Amendment No. 10, for the Standardized NUHOMS® Horizontal Modular Storage System, to the extent necessary for the applicant to transfer DSC 16 into a Horizontal Storage Module (HSM). This would permit the continued storage of that DSC for the service life of the canister. Specifically, the exemption would relieve the applicant from meeting TS 1.2.5 of Attachment A of CoC No. 1004, which requires that all DSC closure welds, except those subjected to full volumetric inspection, shall be dye penetrant tested in accordance with the requirements of the ASME B&PV Code Section III, Division 1, Article NB–5000. Technical Specification 1.2.5 further requires that the liquid penetrant test acceptance standards shall be those described in Subsection NB–5350 of the ASME BP&V Code.

Xcel Energy loaded spent nuclear fuel into six 61BTH DSCs starting in September 2013. Subsequent to the loading, it was discovered that certain elements of the liquid penetrant test (PT) examinations, which were performed on the DSCs to verify the acceptability of the closure welds, do not comply with the requirements of TS 1.2.5. All six DSCs were affected. Five of the six DSCs (numbers 11–15) had already been loaded in the HSMs when the discrepancies were discovered. The DSC 16 remains on the reactor building refueling floor in a transfer cask (TC).

Xcel Energy has performed phased array ultrasonic testing (PAUT) of the closure welds, supported by analysis, as an alternate means for verifying the weld quality. The PAUT nondestructive examination (NDE) consists of testing performed by qualified personnel, using specific procedures and equipment shown by performance demonstration to be sufficient to detect the range of potential weld defects that could be present in the closure welds. The exemption request, if approved, would allow the transfer of DSC 16 into an HSM, and would permit the continued storage of that DSC for the service life of the canister. Xcel Energy plans to request a separate exemption for the remaining DSCs (11–15).

In a letter dated September 29, 2015, as supplemented January 29, 2016, and March 29, 2016, the applicant requested an exemption from certain parts of the following requirements to allow storage of the DSC at the MNGP ISFSI:

- 10 CFR 72.212(b)(3), which states that the general licensee must ensure that each cask used by the general licensee conforms to the terms, conditions, and specifications of a CoC or an amended CoC listed in § 72.214.
- 10 CFR 72.212(b)(11), which states, in part, that the licensee shall comply with the terms, conditions, and specifications of the CoC and, for those casks to which the licensee has applied the changes of an amended CoC, the terms, conditions, and specifications of the amended CoC.

Upon review, in addition to the requirements from which the applicant requested exemption, the NRC staff determined that exemptions from the following requirements are also necessary in order to authorize the applicant's request and added the following requirements to the exemption for the proposed action pursuant to its authority under 10 CFR 72.7, "Specific exemptions":

- 10 CFR 72.212(a)(2), which states that this general license is limited to storage of spent fuel in casks approved under the provisions of this part.
- 10 CFR 72.212(b)(5)(i), which requires that the general licensee perform written evaluations, before use and before applying the changes authorized by an amended CoC to a cask loaded under the initial CoC or an earlier amended CoC, which establish that the cask, once loaded with spent fuel or once the changes authorized by an amended CoC have been applied, will conform to the terms, conditions, and specifications of a CoC or an amended CoC listed in § 72.214.
- 10 CFR 72.214, which lists the approved spent fuel storage casks.

III. Discussion

Pursuant to 10 CFR 72.7, the Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations of 10 CFR part 72 as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Authorized by Law

This exemption would allow the applicant to transfer DSC 16 into an HSM, and would permit the continued storage of that DSC at the MNGP ISFSI for the service life of the canister by relieving the applicant of the requirement to meet the liquid penetrant test requirements of TS 1.2.5 of Attachment A of CoC No. 1004. The provisions in 10 CFR part 72 from which the applicant is requesting exemption, as well as provisions determined to be applicable by the NRC staff, require the licensee to comply with the terms, conditions, and specifications of the CoC for the approved cask model it uses. Section 72.7 allows the NRC to grant exemptions from the requirements of 10 CFR part 72. As explained below, the proposed exemption will not endanger life or property, or the common defense and security, and is otherwise in the public interest. Issuance of this exemption is consistent with the Atomic Energy Act of 1954, as amended, and not otherwise inconsistent with NRC's regulations or other applicable laws. Therefore, the exemption is authorized by law.

Will Not Endanger Life or Property or the Common Defense and Security

This exemption would relieve the applicant from meeting TS 1.2.5 of Attachment A of CoC No. 1004, which requires liquid penetrant test examinations to be performed on the DSCs to verify the acceptability of the closure welds, allowing for transfer of DSC 16 into an HSM, and would permit the continued storage of that DSC at the MNGP ISFSI for the service life of the canister. This exemption only addresses DSC 16, for which the PT test was not performed in accordance with the examination procedures specified in TS 1.2.5. Xcel Energy performed phased array ultrasonic testing to nondestructively examine the welds, and prepared structural analyses based on the actual weld quality to verify that the welds would perform their desired function over the storage term of the DSC. As detailed below, NRC staff reviewed the exemption request to determine whether granting of the exemption would cause potential for danger to life, property, or common defense and security.

Review of the Requested Exemption

The NUHOMS® system provides horizontal dry storage of canisterized spent fuel assemblies in an HSM. The cask storage system components for NUHOMS® consist of a reinforced concrete HSM and a DSC vessel with an internal basket assembly that holds the spent fuel assemblies. The HSM is a low-profile, reinforced concrete structure designed to withstand all normal condition loads, as well as abnormal condition loads created by natural phenomena such as earthquakes and tornadoes. It is also designed to withstand design basis accident conditions. The Standardized NUHOMS® Horizontal Modular Storage System has been approved for storage of spent fuel under the conditions of Certificate of Compliance No. 1004. The DSC under consideration for exemption was loaded under Certificate of Compliance No. 1004, Amendment No. 10.

The NRC has previously approved the Standardized NUHOMS® Horizontal Modular Storage System. The requested exemption does not change the fundamental design, components, contents, or safety features of the storage system. The NRC staff has evaluated the applicable potential safety impacts of granting the exemption to assess the potential for danger to life or property or the common defense and security; the evaluation and resulting conclusions are presented below. The potential impacts identified for this exemption request were in the areas of materials, structural integrity, thermal, shielding, and confinement capability.

Materials Review for the Requested Exemption: The applicant asserted that there is reasonable assurance of safety for the requested exemption for the transfer of DSC 16 to the MNGP ISFSI pad. The applicant's assertion of reasonable assurance of safety for the transfer of DSC 16 is based on the following:

- Repair and verification activities performed on DSC 16;
- PAUT examination and analysis of accessible lid welds on DSC 16;
- Short duration and haul distance of the transfer of DSC 16, and
- The safest location for DSC 16 is in the HSM.

The applicant asserts that there is a reasonable assurance of safety for the requested exemption for DSC 16 (CoC

No. 1004, Amendment 10) based on the following:

- Integrity of the fuel (cladding) creates a fission product barrier;
- The quality of the welding process employed provides indication of development of quality welds;
- The advantages of the multi-layer weld technique which includes the low probability for flaw propagation, the subsequent covering of weld layer surface flaws and the indication of development of quality welds;
- Visual inspections performed on the welds met quality requirements;
- The DSC backfill and helium leak testing results verify confinement barrier integrity;
- The lack of a failure mechanism that adversely affects confinement barrier integrity; and
- Margin of safety is available in the welds when assuming conservatively large flaws. These margins are demonstrated by two different methods: (1) Structural analysis using an analysis-based Stress Allowance Reduction Factor and theoretically-bounding full-circumferential flaws, and (2) a finite element analysis assuming flaw distributions conservatively derived from PAUT examination.

The applicant stated that the PAUT examination and analysis provides an objective review of volumetrically-identified flaw indications in the accessible DSC 16 Inner Top Cover Plate (ITCP) and Outer Top Cover Plate (OTCP) closure welds. The peak strains in the welds remain well below the weld material ductility limit when subjected to the accident pressure and drop loads. The peak strains have a margin of safety of 3.69 and 3.60 for accident pressure and drop loads, respectively. Furthermore, it was shown that the strains in the welds remain stable at 150 percent of the original design loads for the NUHOMS® 61BTH DSC. The applicant's analysis accounted for the identified ITCP and OTCP closure weld flaws and the uncertainties in the PAUT examination. The applicant stated that this approach, which is consistent with the NRC's Spent Fuel Project Office Interim Staff Guidance-15 (ISG–15), conservatively accounts for any additional limitations in the efficacy of the PAUT examinations and also accounts for the inaccessible area around the vent and siphon block as well as the geometric reflectors at the root and near the toe of the closure welds.

The applicant noted that the proposed exemption applies only to DSC 16 and is supported by the following reports:

1. Technical Justification for Phased Array Ultrasonic Examination of Dry Storage Canister Lid Welds Report No. 54–PQ–114–001, January 30, 2015 (AREVA, INC., 2015a).
2. Technical Report of the Demonstration of UT NDE Procedure 54–UT–114–000 Phased Array Ultrasonic Examination of Dry Storage Canister Lid Welds Report No. 51–9234641–001, January 30, 2015 (AREVA, INC., 2015b).
3. 61BTH ITCP and OTCP Closure Weld Flaw Evaluation, Calculation 11042–0205 Revision 3 (AREVA, INC., 2016).

The NRC staff reviewed Technical Justification for Phased Array Ultrasonic Examination of Dry Storage Canister Lid Welds Report No. 54–PQ–114–001, dated January 30, 2015 (AREVA, INC., 2015a). This report provides the detailed technical justification for the use of the PAUT system to perform the NDE of the OTCP and ITCP closure welds of DSC 16. The NRC staff determined that the technical justification report was adequate to justify the use of PAUT to examine the ITCP and OTCP closure welds because the report included detailed information on the PAUT system design, an assessment of examination sensitivity, flaw detection, flaw sizing, identification and effects of influential parameters, personnel qualification requirements, components to be examined, flaws to be detected, and analysis of flaw detection and flaw sizing data. In addition, the NRC staff determined that the report also described extensive modeling performed to evaluate PAUT array configuration, element arrangements, apertures, frequency, focusing, and beam angles to develop probes for the inspections of the ITCP and OTCP closure welds. The NRC staff also confirmed that the performance of the PAUT system was evaluated using laboratory testing of representative mockup containing 22 typical welding manufacturing flaws that have the potential to exist in field welds. The NRC staff determined that the laboratory testing was adequate to verify the performance of PAUT systems because the non-blind mockup contained representative ITCP and OTCP closure welds with controlled placement of intentional flaws positioned in difficult detection locations such as in the weld root and weld toe regions and were generally small in size.

The NRC staff also reviewed ISG–15, which states that closure lid welds examined by ultrasonic testing (UT) must use UT acceptance criteria of NB–5332 for pre-service examination and be performed in conjunction with the PT of the root and final pass. The ISG–15 also states that if progressive PT examination is used without a volumetric examination, a stress reduction factor of 0.8 is to be imposed on the weld design.

The NRC staff determined that the reduction factor of 0.8 considered by the applicant in their finite element analysis is sufficient to account for weld flaws that potentially were not detected by PAUT, visual inspection and the compliant PT inspection of the OTCP final weld pass. The NRC staff reached this determination based on the demonstrated ability of the PAUT examination to detect weld flaws on both the ITCP and OTCP closure welds including the root pass and the final pass shown in the technical justification of using PAUT to examine the DSC lid closure welds (AREVA, INC., 2015b). The NRC staff noted that the PAUT examination results of the OTCP weld are consistent with the PT examination of the OTCP closure weld final pass after repair and confirmed that no surface breaking flaws are present. Thus, the NRC staff determined that analytical evaluation of the DSC 16 OTCP and ITCP closure welds using the flaw sizing results obtained by the PAUT examination, combined with the discount of the ASME B&PV Code specified minimum elongations for the weld material, is an appropriate method to determine the acceptability of the DSC inner and outer lid to shell closure welds.

The NRC staff determined that the PAUT procedure (AREVA, INC., 2016) was acceptable because the procedure was qualified using a blind performance demonstration in accordance with ASME B&PV Code Section V, Article 14, T–1424(b) Intermediate Rigor (ASME 2004 edition) that qualifies the equipment, procedure, and data analysis personnel for the detection and dimensioning of welding fabrication flaws. The NRC staff determined that PAUT procedures were also acceptable because: (1) Personnel conducting the equipment calibration, data acquisition or data analyses must be qualified by the American Society for Nondestructive Testing (ASNT); (2) the examination area includes the accessible area of the ITCP and OTCP closure welds, and (3) specific procedures were developed and demonstrated for both flaw detection and flaw sizing scans. The NRC staff determined that the examinations were appropriate because: (1) They included >99 percent of the OTCP closure weld with the exception of two (2) 0.5-inch long sections that were identified as limited examination areas as a result of the two longitudinal welds in the canister shell; and (2) the entire ITCP closure weld with the exception of the part of the weld located around the siphon and vent port block resulting in >90 percent coverage of the ITCP closure weld (AREVA, INC., 2016). The NRC staff determined that the personnel qualifications for equipment calibration, data acquisition and data analysis are sufficient because: (1) Data Acquisition Operators require direct supervision of American Society for Nondestructive Testing (ASNT) UT Level II or Level III staff; (2) both Calibration Personnel and Data Analysis Personnel were required to be either ASNT UT Level II or Level III certification; and (3) lead personnel responsible for training and review of flaw indications were required to be ASNT UT Level III qualified. The NRC staff determined that the procedures for the flaw detection scans were adequate, because: (1) The procedures used the known geometric features of the DSC to identify the correct position of the transducer for complete coverage of the closure welds to be examined; and (2) the beams are swept through a range of angles at specified increments along the scan line in order to achieve coverage of the examination volume. The NRC staff determined that the flaw sizing scan procedures were adequate because: (1) Raster scans were conducted at the higher frequency transducer (increased resolution) with a range of beam angles to achieve maximum insonification of the flaw; (2) focal laws were programmed for a focal depth equal to the reported flaw depth; (3) the acquired data was reviewed to verify that signal saturation had not occurred or whether rescanning of the area was necessary to obtain a response that would allow accurate flaw sizing; and (4) the flaw length and flaw height were determined using prescribed signal thresholds. The NRC staff determined that the PAUT minimum attributes for flaw detection and characterization provided by the applicant were acceptable and are commensurate with NRC confirmatory research findings involving PAUT examinations of welds (A.A. Diaz, S.L. Crawford, A.D. Cinson, and M.T. Anderson, "Technical Letter Report, An Evaluation of Ultrasonic Phased Array Testing for Reactor Piping System Components Containing Dissimilar Metal Welds JCN N6398, Task 2A, PNNL–19018," Richland, WA; Pacific Northwest National Laboratory, November 2009).

The NRC staff determined that PAUT data analysis methods provided by the applicant were adequate because they included specific procedures for flaw detection and flaw sizing necessary to locate and size flaws in the ITCP and OTCP closure welds using PAUT. The NRC staff determined that the applicant demonstrated the accuracy of the PAUT flaw detection and flaw sizing procedures using closure welds mockups with imbedded flaws. The NRC staff determined that PAUT procedure contained sufficient detail to ensure that the examination can be repeated with similar results and provides reasonable assurance that the examination could detect and size flaw indications found within the closure lid weld volumes.

The NRC staff reviewed Technical Report of the Demonstration of UT NDE Procedure 54–UT–114–000 Phased Array Ultrasonic Examination of Dry Storage Canister Lid Welds Technical Report Document 51–9234641–001, dated January 30, 2015 (AREVA, INC., 2015b). This report summarizes the PAUT performance demonstration on a second ITCP and OTCP weld mockup specimen known as the blind mockup. The report states the overall task objective is to utilize a PAUT technique for detection and characterization of fabrication flaws in the closure lid welds of DSCs. The developed procedure was evaluated through a blind performance demonstration that included the scanning and data analysis of a secured (true-state withheld from examiners) OTCP and ITCP closure weld mockup. The blind mockup contained a number of controlled welding fabrication flaws similar in size and type to the flaws contained in the non-blind mockup, but placed in different locations. The technical report of the demonstration identified a calculated probability of detection (POD) of 97 percent with no missed detections (*i.e.,* none of the known imbedded flaws in the blind mockup were missed in the performance demonstration) and one false call (*i.e.,* one flaw indication reported by an examiner in the blind performance demonstration was incorrect and was not an actual imbedded flaw). As previously stated, the use of PAUT procedure to inspect DSC closure lid welds for this application was developed in accordance with ASME B&PV Code Section V, Article 14, T–1424(b), Intermediate Rigor (ASME 2004 edition). Intermediate rigor requires that a limited performance demonstration be conducted achieving a flaw POD of 80 percent and a false call rate of less than 20 percent. The NRC staff finds the demonstration of PAUT procedure to be acceptable, because the blind performance demonstration results exceed the criteria for acceptable performance listed in ASME B&PV Code Section V, Article 14, T–1471 Intermediate Rigor Detection Test (ASME 2004 edition).

The NRC staff reviewed Monticello DSC 16 phased array UT examination results that were used as an input to the 61BTH ITCP and OTCP Closure Weld Flaw Evaluation CALCULATION 11042–0205, Revision 3 (AREVA, INC., 2016). The NRC staff determined that the examination results were acceptable because:

1. The examination was conducted in accordance with the PAUT examination procedure developed in accordance with ASME B&PV Code Section V, Article 14, T–1424(b), Intermediate Rigor (ASME 2004 edition).
2. Flaws identified were appropriately characterized in terms of flaw length and flaw height. The PAUT examination identified the location of the flaws with respect to the geometric features of the DSC shell, the ITCP and the OTCP, and closure lid welds.
3. The largest flaw in the OTCP closure weld was characterized as having a height of 0.14 inches which is not greater than the thickness of one weld bead and less than the OTCP closure weld critical flaw size of 0.29 inches.
4. The largest flaw in the ITCP closure weld was characterized as having a height of 0.11 inches which is not greater than the thickness of one weld bead and less than the ITCP closure weld critical flaw size of 0.15 inches.

The NRC staff reviewed the preservice examination requirements of ASME B&PV Code Section III NB–5280 (ASME 1998 edition with 2000 addenda). The NRC staff determined that the PAUT examination results identified and sized flaws that exceed the acceptance criteria of NB–5332 (ASME 1998 edition with 2000 addenda), and NB–5332 is an acceptable approach under ISG–15. The applicant stated that the flaws identified by the PAUT examination were explicitly included in the finite element models as design features. Further, all indications found through the PAUT exam were, according to the applicant, conservatively characterized as planar and evaluated as such. The NRC staff determined that the approach taken by the applicant is acceptable, because: (1) The PAUT system was capable of identifying and sizing the flaws in the ITCP and OTCP welds with the exception of small sections of the OTCP closure weld as a result of longitudinal welds in the canister shell and the portion of the ITCP closure weld around the siphon and vent block; (2) the size of the flaws used in the analysis conservatively bounds the size and distributions of flaws identified by

PAUT; and (3) the applicant applied a reduction factor of 0.8 on the ASME B&PV Code specified minimum elongations to the weld material to account for flaws that may not have been detected by the PAUT examination.

As a result of the conclusions discussed above, the NRC staff finds that there is adequate material performance of the components important to safety for DSC 16, loaded under CoC No. 1004, Amendment No. 10, and that DSC 16, as addressed in the exemption request, remains in compliance with 10 CFR part 72.

Structural Review for the Requested Exemption: The partial-penetration welds of the canister OTCP and the ITCP of the Type 1 NUHOMS® 61 BTH DSCs were originally evaluated in accordance with the ASME B&PV Code Section III, Subsection NB code limits. After the weld repair and verification activities on DSC 16, the applicant performed a PAUT examination and documented volumetrically-identified flaw indications in the welds. In the *Materials Review for the Requested Exemption,* the staff determined that the PAUT examination results were appropriate for analytical modeling. The results provided a basis for the applicant to model weld flaw size and distribution in performing structural evaluation by analysis. The evaluations and resulting conclusions to demonstrate the welds structural performance is presented below.

AREVA Calculation No. 11042–0204, Revision 3, "Allowable Flaw Size Evaluation in the Inner Top Cover Weld for DSC # 16," used the ASME B&PV Code, Section XI, Appendix C flaw evaluation methodology to compute the allowable flaw size for governing Load Case TR–9 of an internal pressure of 20 psi plus a 25-g inertia loading associated with the DSC corner drop. A theoretical subsurface crack or an equivalent surface crack residing in the full circumference around the 0.25-inch deep ITCP weld in DSC 16 was assumed to be subject to the radial tensile membrane force on the weld. For the membrane stress of 17.08 ksi resulting from multiplying the calculated stress of 13.14 ksi with a service factor, SF_m, of 1.3 for Service Level D, the applicant determined a 0.15-inch wide allowable flaw size. The staff reviewed the analysis assumptions and concludes that the flaw size and distribution are conservatively modeled in accordance with the ASME B&PV Code Section XI flaw evaluation methodology to demonstrate sufficient structural performance margins in the welds.

In Structural Integrity Associates (SIA) Calculation Package No. 1301415.301, Revision 0, "Development of an Analysis Based Stress Allowable Reduction Factor (SARF), Dry Shielded Canister (DSC) Top Closure Weldments," the applicant used a finite element analysis (FEA) approach to perform generic evaluation of flaw effects on the weld stress performance. Three types of flaw geometry, radial, circumferential, and laminar flaws for a range of distribution of flaw length, depth, and spacing in the DSC ITCP and OTCP were analyzed. Following a commonly acceptable FEA practice to simulate flaws with the elements of near zero stiffness, the applicant computed the membrane and membrane-plus-bending stress intensities in the welds. By comparing the results from the FEA models, with and without flaws, for the pressure and side drop load cases, a ratio, or SARF, was determined for each critical weld section cut of interest. For the OTCP, the applicant computed SARFs for 7 flaw configurations each for the individual pressure and side drop loading cases. This established a minimum SARF of greater than 0.7 for the through-wall circumferential flaws assumed to span an arc length of 2.016 inches with a common arc spacing of 5.184 inches. From the weld quality review documented in the SIA report, No. 1301415.405, "Expectations for Field Closure Welds on the AREVA–TN NUHOMS® 61BTH Type 1 & 2 Transportable Canister for BWR Dry Fuel Storage," the applicant determined that only the circumferential flaws are potentially representative of the weld condition of the ITCP. This provided the basis for postulating a 360 degree, 50 percent intermittently embedded, through-wall circumferential flaw with a 0.006 in^2 cross section area for the FEA. This resulted in the calculated SARFs of 0.945 and 0.931 for the pressure and side drop cases, respectively. The staff reviewed the modeling assumptions and FEA results and concludes that the FEA method is suitable for analyzing the stress performance of the weld as a continuum with multiple embedded flaws.

Using the PAUT flaw indication examination results, the applicant performed an FEA to determine the weld structural performance margins, in accordance with the ASME Section III code limits, for the ITCP and OTCP of DSC 16. As noted in AREVA Calculation No. 11042–0205, Revision 3, "61BHT ITCP and OTCP Closure Weld Evaluation," two full-circumferential, bounding flaw sets for the OTCP and one for the ITCP were used in the simulation of the flaw indications in the FEA models. The first set of the two bounding flaws in the OTCP are 0.14 inches and 0.195 inches each in height while the second set of the three flaws range in height from 0.07 inches to 0.16 inches. The single flaw set for the ITCP consists of two bounding flaws, a 0.09-inch high flaw between the weld metal and the DSC shell and another 0.11-inch high inside the ITCP, but at close proximity to the weld metal.

Using an elastic-perfectly plastic material property model, the applicant evaluated the top cover plates-to-shell welds for three governing load cases: (1) Internal pressure loading of 32 psi for Service Levels A/B; (2) internal pressure loading of 65 psi for Service Level D; and (3) side drop loading of 75 g for Service Level D. Given that the potential exists for the weld to undergo material yielding, the applicant performed a limit analysis, per the ASME B&PV Code, Section III, Paragraph NB–3228.1, "Limit Analysis," provisions, for the Service Level A/B, normal and off-normal condition load cases. Correspondingly, the rules of ASME B&PV Code Section III, Appendix F, Paragraph F–1341.3, "Collapse Load," were used for the Service Level D, accident condition load cases. The limit analysis, with elastic-perfectly plastic material model, revealed that the weld would undergo unbounded deformation after the material yielding strength is exceeded.

To address the potential material rupture associated with large weld deformation and, hence, high plastic strain concentrations, the applicant performed an elastic-plastic analysis to supplement the determination of the weld performance margins for DSC 16. This was accomplished by considering a Ramberg-Osgood idealization of the stress-strain curve for SA–240 Type 301 stainless steel, which recognizes strain hardening effects for the large-deformation FEA models with embedded flaws in the welds. The elastic-plastic analyses resulted in the maximum equivalent plastic strains of 5.97 percent and 6.09 percent for the Service Level D design pressure of 65 psi and side drop of 75 g, respectively. The calculated strains are much smaller than the ASME B&PV Code specified minimum elongations of SA–240 Type 304 stainless steel at 40 percent and E308–XX electrode at 35 percent.

Additionally, for a conservative determination of margins of safety, the applicant considered a load factor of 1.5 to evaluate the welds subject to a DSC internal pressure of 100 psi ($65 \times 1.5 = 97.5 < 100$ psi) and a side drop of 122.5 g ($75 \times 1.5 = 122.5$ g). The elastic-plastic analyses, per the ASME B&PV Code, Section III, Paragraph NB–3228.3 Plastic Analysis provisions, resulted in a peak equivalent plastic strain of 12.6 percent for both loading cases. On the basis of the weld material elongation limit of 28 percent, a reduction of the ASME B&PV Code specified weld elongation limit of 35 percent by a factor 0.8 (0.35 × 0.8 = 0.28), to account for flaws that may not have been detected by the PAUT examination, the applicant calculated the margins of safety of 3.69 and 3.60 for the internal pressure and side drop loading cases, respectively.

The NRC staff reviewed the FEA modeling assumptions and concludes that the elastic-plastic analysis was implemented with appropriate loading conditions and materials properties, as described above. The analysis results show that the welds would undergo plastic deformation for the Service Level D loading associated with canister internal pressure and side drop accident conditions. However, no material rupture or breach of DSC confinement boundary at the welds is expected because of the large margins of safety against the ASME B&PV Code specified elongation limits. For this reason, the staff has reasonable assurance to conclude that the ITCP and OTCP welds of DSC 16 have adequate structural integrity for the normal, off-normal, and accident and natural phenomenon conditions. The NRC staff also finds that the retrievability of DSC 16 is ensured based on the demonstration of adequate structural integrity discussed above.

The NRC staff finds that the structural function of DSC 16, loaded under CoC No. 1004, Amendment No. 10, addressed in the exemption request remains in compliance with 10 CFR part 72.

Thermal Review for the Requested Exemption: The applicant stated that even though nonconforming examinations exist, satisfactory completion of the required helium leak test conducted on DSC 16 has specifically demonstrated the integrity of the primary confinement boundary (ITCP and siphon/vent cover plate) welds. These tests (conducted per TS 1.2.4a) specifically demonstrate that the primary confinement barrier field welds are "leak tight" as defined in American National Standards Institute (ANSI) N14.5–1997. The licensee stated that, in this respect, the helium leak test demonstrates the basic integrity of the confinement barrier and the lack of a through-weld flaw in the field closure welds that would lead to a loss of cavity helium in DSC 16. The licensee stated that the field closure welds indirectly support the thermal design function by virtue of their confinement function (as demonstrated by the helium leak test conducted on DSC 16) which assures the helium atmosphere in the DSC 16 cavity is maintained in order to support heat transfer.

The NRC staff reviewed the licensee's exemption request and also evaluated its effect on the DSC 16 thermal performance. The NRC staff concludes that the cask thermal performance is not affected by the exemption request because the applicant has shown that a satisfactory helium leak test was conducted on DSC 16, which assures integrity of the primary confinement boundary. Integrity of the primary confinement boundary assures the spent fuel is stored in a safe inert environment with unaffected heat transfer characteristics that assure peak cladding temperatures remain below allowable limits. Therefore, based on the NRC staff's review of the licensee's evaluation and technical justification, the NRC staff finds the exemption request acceptable by virtue of the demonstrable structural integrity of the ITCP and OTCP.

The NRC staff finds that the thermal function of DSC 16, loaded under CoC No. 1004, Amendment No. 10, addressed in the exemption request remains in compliance with 10 CFR part 72.

Shielding and Criticality Safety Review for the Requested Exemption: The NRC staff reviewed the criticality safety and radiation protection effectiveness of DSC 16 presented in the Monticello exemption request. The NRC staff finds that DSC 16 is not affected by the nonconforming PT examinations because storage of DSC 16 on the MNGP ISFSI will not significantly alter the assumptions of the criticality safety and radiation protection analysis of the 61BTH DSC. The interior of DSC 16 will continue to prevent water in-leakage, which means that the system will remain subcritical under all conditions. The nonconforming PT examinations do not affect the radiation source term of the spent fuel contents, or the configuration of the shielding components of the Standardized NUHOMS® system containing the 61BTH DSC, meaning that the radiation protection performance of the system is not altered.

The NRC staff finds that the criticality safety and shielding function of DSC 16, loaded under CoC No. 1004, Amendment No. 10, addressed in the exemption request remains in compliance with 10 CFR part 72.

Confinement Review for the Requested Exemption: The objective of the confinement evaluation was to confirm that DSC 16 loaded at the MNGP met the confinement-related requirements described in 10 CFR part 72.

As described in the licensee's "Exemption Request for Nonconforming Dry Shielded Canister Dye Penetrant Examinations" (Enclosure 1 of the September 29, 2015, submittal), certain elements of the DSC 16 closure weld PT examinations did not comply with examination procedures. To support the exemption request, the licensee noted that a helium leakage rate test of the closure's confinement boundary, including ITCP weld, siphon cover plate weld, and vent port cover plate weld, were conducted per TS 1.2.4a and demonstrated that the primary confinement barrier field welds met the TS acceptance criterion of 1E–7 cc/sec (*i.e.*, "leaktight" as defined by ANSI N14.5). The applicant noted that failure to comply with the PT examination procedures would not change the general integrity of these DSC closure welds. NRC staff concludes that not performing the PT examination procedures relevant to this exemption request would not change the results of the helium leakage test and, therefore, the demonstration of the closure confinement integrity, as defined by the licensing basis, is unaffected. In addition, in the *Structural Review for the Requested Exemption* and *Materials Review for the Requested Exemption* evaluations described previously, staff evaluated the applicant's repair and verification activities and the PAUT examinations and analyses associated with DSC 16 and concluded DSC 16 meets the requirements of 10 CFR part 72.

As discussed above, because the PT examinations did not affect DSC 16's helium leak test results, the NRC staff finds that the confinement function of DSC 16, loaded under CoC No. 1004, Amendment No. 10, remains in compliance with 10 CFR part 72.

Review of Common Defense and Security: The NRC staff considered the potential impacts of granting the exemption on the common defense and security. The requested exemption is not related to any security or common defense aspect of the MNGP ISFSI, therefore granting the exemption would not result in any potential impacts to common defense and security.

Based on its review, the NRC staff has reasonable assurance that the storage system will continue meet the thermal, structural, criticality, retrievability and radiation protection requirements of 10 CFR part 72 and, therefore, will not endanger life or property. The NRC staff also finds that there is no threat to the common defense and security.

Therefore, the NRC staff concludes that the exemption to relieve the applicant from meeting TS 1.2.5 of Attachment A of CoC No. 1004, Amendment No. 10, which requires that liquid penetrant test examinations be performed on DSCs to verify the acceptability of the closure welds, allowing for transfer DSC 16 into an HSM, and would permit the continued storage of that DSC for the service life of the canister at the MNGP ISFSI will not endanger life or property or the common defense and security.

Otherwise in the Public Interest

In considering whether granting the exemption is in the public interest, the NRC staff considered the alternative of not granting the exemption. If the exemption were not granted, in order to comply with the CoC, either (1) DSC 16 would have to be opened and unloaded, and the contents loaded in a new DSC, and that DSC welded and tested, or (2) the OTCP would need to be machined off, and the ITCP weld machined down to the root weld; and the DSC, ITCP and OTCP inspected to determine if there was any damage as a result of the machining (which would then necessitate the actions detailed in option 1). If there were no such damage, the DSC would need to be re-welded and inspected. Both options would entail a higher risk of a cask handling accidents, additional personnel exposure, and greater cost to the applicant. Both options would also generate additional radioactive contaminated material (including the unloaded DSC for option 1) and waste from operations, because the lid would have to be removed in either case, which would generate cuttings from removing the weld material that could require disposal as contaminated material.

The proposed exemption to allow transfer of DSC 16 into an HSM, and permit the continued storage of that DSC for the service life of the canister at the MNGP ISFSI, is consistent with NRC's mission to protect public health and safety. Approving the requested exemption produces less of an opportunity for a release of radioactive material than the alternatives to the proposed action because there will be no operations involving opening the DSCs which confine the spent nuclear fuel. Therefore, the exemption is in the public interest.

Environmental Consideration

The NRC staff also considered in the review of this exemption request whether there would be any significant environmental impacts associated with the exemption. The NRC staff determined that this proposed action fits a category of actions that do not require an environmental assessment or environmental impact statement. Specifically, the exemption meets the categorical exclusion in 10 CFR 51.22(c)(25).

Granting this exemption from 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.214, and 72.212(b)(11) only relieves the applicant from the inspection or surveillance requirements associated with performing PT examinations with regard to meeting Technical Specification (TS) 1.2.5 of Attachment A of CoC No. 1004. A categorical exclusion for inspection or surveillance requirements is provided under 10 CFR 51.22(c)(25)(vi)(C) if the criteria in 10 CFR 51.22(c)(25)(i)–(v) are also satisfied. In its review of the exemption request, the NRC staff determined, as discussed above, that, under 10 CFR 51.22(c)(25): (i) Granting the exemption does not involve a significant hazards considerations because granting the exemption neither reduces a margin of safety, creates a new or different kind of accident from any accident previously evaluated, nor significantly increases either the probability or consequences of an accident previously evaluated; (ii) granting the exemption would not produce a significant change in either the types or amounts of any effluents that may be released offsite because the requested exemption neither changes the effluents nor produces additional avenues of effluent release; (iii) granting the exemption would not result in a significant increase in either occupational radiation exposure or public radiation exposure, because the requested exemption neither introduces new radiological hazards nor increases existing radiological hazards; (iv) granting the exemption would not result in a significant construction impact, because there are no construction activities associated with the requested exemption; and; (v) granting the exemption would not increase either the potential or consequences from radiological accidents such as a gross leak from the closure welds, because the exemption neither reduces the ability of the closure welds to confine radioactive material nor creates new accident precursors at the MNGP ISFSI. Accordingly, this exemption meets the criteria for a categorical exclusion in 10 CFR 51.22(c)(25)(vi)(C).

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No.
Monticello Nuclear Generating Plant Exemption Request for Nonconforming Dry Shielded Canister Dye Penetrant Examinations, September 29, 2015.	ML15275A023 ML15275A024 ML15275A025
Monticello Nuclear Generating Plant Exemption Request for Nonconforming Dry Shielded Canister Dye Penetrant Examinations, Supplemental Information, January 29, 2016.	ML16035A214 ML16049A081 ML16049A094
Monticello Nuclear Generating Plant Exemption Request for Nonconforming Dry Shielded Canister Dye Penetrant Examinations, Supplemental Information to Respond to the Second Request for Additional Information, March 29, 2016.	ML16091A228 ML16097A460
Interim Staff Guidance No. 15, Rev. 0, Materials Evaluation, January 10, 2001	ML010100170
Technical Justification for Phased Array Ultrasonic Examination of Dry Storage Canister Lid Welds Report No. 54–PQ–114–001, January 30, 2015.	ML16035A185 ML16035A186 ML16049A094
Technical Report of the Demonstration of UT NDE Procedure 54–UT–114–000 Phased Array Ultrasonic Examination of Dry Storage Canister Lid Welds Report No. 51–9234641–001, January 30, 2015.	ML16035A184
61BTH ITCP and OTCP closure Weld Flaw Evaluation, Calculation 11042–0205, Revision 3, March 21, 2016	ML16097A460
Technical Letter Report, An Evaluation of Ultrasonic Phased Array Testing for Reactor Piping System Components Containing Dissimilar Metal Welds JCN N6398, Task 2A, PNNL–19018," Richland, WA; Pacific Northwest National Laboratory, November 2009.	ML093570315

Document	ADAMS Accession No.
AREVA Calculation No. 11042–0204, Revision 3, Allowable Flaw Size Evaluation in the Inner Top Cover Weld for DSC #16, September 29, 2015.	ML15275A024
Structural Integrity Associates Calculation Package No. 1301415.301, Revision 0, Development of an Analysis Based Stress Allowable Reduction Factor (SARF), Dry Shielded Canister (DSC) Top Closure Weldments, October 2014.	ML15275A025
Structural Integrity Associates report, No. 1301415.405, Expectations for Field Closure Welds on the AREVA–TN NUHOMS® 61BTH Type 1 & 2 Transportable Canister for BWR Dry Fuel Storage, November 3, 2014.	ML14309A194

IV. Conclusion

Based on the foregoing considerations, the NRC staff has determined that, pursuant to 10 CFR 72.7, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the NRC grants the applicant an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.214, and 72.212(b)(11), only with regard to meeting Technical Specification (TS) 1.2.5 of Attachment A of CoC No. 1004 for DSC 16.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 8th day June, 2016.

For the Nuclear Regulatory Commission.

Bernie White,

Acting Branch Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–14188 Filed 6–14–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–194]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 17, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

The Commission gives notice that the Postal Service has filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The requests(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–194; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 9, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 17, 2016.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–14172 Filed 6–14–16; 8:45 am]

BILLING CODE 7710–FW–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information on the Development of the 2017 National Plan for Civil Earth Observations; Correction

ACTION: Notice of Request for Information (RFI); correction.

SUMMARY: On June 2, 2016, the White House Office of Science and Technology Policy (OSTP) published a document in the **Federal Register** (81 FR 35398) requesting information on development of the 2017 *National Plan for Civil Earth Observations.* That document contained one error in an OSTP email address, and in one of the listed phone numbers. OSTP is therefore reissuing this document with the corrected information.

On behalf of the U.S. Group on Earth Observations (USGEO), a Subcommittee of the National Science and Technology Council (NSTC) Committee on Environment, Natural Resources, and Sustainability (CENRS), OSTP requests input from all interested parties regarding recommendations for the development of the 2017 *National Plan for Civil Earth Observations* ("National Plan", or "Plan"). An electronic

template with questions will be posted at *https://www.usgeo.gov*. Comments of up to approximately 2,000 characters per question are requested and must be received by 11:59 p.m. (Eastern Standard Time), July 15, 2016 to be considered. The public input provided in response to this Notice will inform OSTP as it works with Federal agencies and other stakeholders to develop this Plan.

DATES: Responses must be received by 11:59 p.m. (Eastern Standard Time), July 15, 2016, to be considered.

ADDRESSES: You may submit comments by any of the following methods. The first method is preferred by OSTP.

- *Downloadable form:* To aid in information collection and analysis, the Office of Science and Technology Policy (OSTP) encourages responses to be provided by filling out the downloadable form located at *http://www.whitehouse.gov/administration/eop/ostp/library/shareyourinput* and emailing that form, as an attachment, to *env_energy@ostp.eop.gov*. Please include "National Plan for Civil Earth Observations" in the subject line of the message.
- *Fax:* (202) 456–6071. On the cover page, please state "National Plan for Civil Earth Observations, attn: Timothy Stryker".
- *Mail:* Office of Science and Technology Policy, 1650 Pennsylvania Avenue NW., Washington, DC 20504. Information submitted by postal mail should be postmarked by July 15, 2016.

Instructions: Response to this RFI is voluntary. Respondents need not reply to all questions listed. Each individual or institution is requested to submit only one response. OSTP may post responses to this RFI without change, online. OSTP therefore requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Timothy Stryker, Director, U.S. Group on Earth Observations Program, OSTP; 202–419–5487; *tstryker@ostp.eop.gov*.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Government is the world's largest single provider of civil environmental and Earth-system data. These data are derived from Earth observations collected by numerous Federal agencies and partners in support of their missions and are critical to the protection of human life and property, economic growth, national and homeland security, and scientific research.

Federal investments in Earth-observation activities ensure that decision makers, businesses, first responders, farmers, and a wide array of other stakeholders have the information they need about climate and weather; natural hazards; land-use change; ecosystem health; water; natural resources; and other characteristics of the Earth system. Taken together, Earth observations provide the indispensable foundation for meeting the Federal Government's long-term sustainability objectives and advancing the Nation's societal, environmental, and economic well-being.

As the Nation's capacity to observe the Earth system has grown, however, so has the operating complexity of sustaining and coordinating civil Earth-observation research, operations, and related activities. To address these growing complexities, in October 2010, Congress charged the Director of OSTP with establishing a mechanism to ensure greater coordination of the research, operations, and activities relating to civil Earth observations, including the development of a triennial strategic implementation plan and a process for external independent advisory input (*see* the National Aeronautics and Space Authorization Act of 2010, Pub. L. 111–267, Section 702). In response, OSTP coordinated the first-ever Earth Observation Assessment (EOA 2012), a snapshot of the current portfolio of Earth-observing systems and surveys used to meet key Federal civil objectives across thirteen thematic Societal Benefit Areas (SBAs), and released the National Strategy for Civil Earth Observations in April 2013 ("the National Strategy", see *http://www.whitehouse.gov/sites/default/files/microsites/ostp/nstc_2013_earthobsstrategy.pdf*).

OSTP subsequently developed and released the first National Plan for Civil Earth Observations with support of the U.S. Group on Earth Observations (USGEO) Subcommittee in July 2014 ("the 2014 National Plan", see *https://www.whitehouse.gov/sites/default/files/microsites/ostp/NSTC/2014_national_plan_for_civil_earth_observations.pdf*). Based in large part on the results of EOA 2012, the 2014 National Plan established priorities and supporting actions for advancing our civil Earth-observations capabilities and ensuring stable, continuous, and coordinated Earth-observation capabilities for the benefit of society.

The 2016 Earth Observation Assessment (EOA 2016), the second iteration of the assessment process, is nearing completion. Conducted by the Assessment Working Group of the USGEO Subcommittee, EOA 2016 will provide foundational input for OSTP to use when developing the second National Plan for Civil Earth Observations ("Plan"). In addition, other USGEO Subcommittee activities, including an interagency satellite needs-collection process, U.S. engagement in the intergovernmental Group on Earth Observations (GEO) and efforts to advance the discoverability, accessibility, and usability of Earth-observation data products across the Federal Government, will inform the development of the Plan.

As EOA 2016 nears completion, OSTP has commenced the development of the Plan and is seeking public advisory input on this process through this RFI. The public input provided in response to this RFI will inform OSTP and USGEO as they work with Federal agencies and other stakeholders to develop the Plan. Following the receipt and review of responses to this RFI, OSTP also intends to host a public meeting as an additional way to collect individual, actionable feedback. This meeting will feature Federal and non-Federal participants and allow for focused discussions on specific questions related to the priorities and supporting actions outlined in the first National Plan.

Questions To Inform Development of the National Plan

Through this RFI, OSTP seeks responses to the following questions:

1. What services do you provide or research do you do using Federal Earth observation data and information products? Please provide specific examples.

2. What decisions do you make or support using Federal Earth observation data and information products? Please provide specific examples.

3. In the areas listed below, where has the Federal Government been the most, or least, successful and why? Please provide specific examples. You do not need to provide responses to all listed areas—please focus on those most relevant to your work.

a. Improving spatial and temporal resolution, sample density, and geographic coverage of measurements from Earth observation systems.

b. Developing and deploying new Earth observation systems that address user needs.

c. Improving the discoverability, accessibility, and usability of Earth observation data, model output, and derived information products.

4. One important policy goal for Federal agencies has been to improve external users' ability to find, access, and use Earth observation data and information products. In which of these three areas (finding, accessing, or using) have you witnessed improvements, if any? Please provide specific examples.

5. In the areas listed below, what could the Federal Government do to improve the Earth observations that you rely on? Please provide specific examples. You do not need to provide responses to all listed areas—please focus on those most relevant to your work.

a. Maintain current observing systems.

b. Incrementally improve or upgrade current observing systems.

c. Develop new observing systems with significantly enhanced measurement capabilities.

d. Develop new agency practices to improve the discoverability, accessibility, and usability of Earth observation data.

6. On what emerging technologies, techniques, and management practices should the Federal Government focus attention in the next few years to enhance public services, research in the public interest, and fundamental scientific inquiry?

7. What types of partnerships with Federal agencies, such as those listed below, show the most promise to address current gaps in Earth observation coverage and related service provision? Please provide specific examples. You do not need to provide responses to all listed areas—please focus on those most relevant to your work. You are also free to discuss other types of partnerships that are not listed below.

a. Cooperative research and development agreements.

b. Challenges and prizes.

c. Joint ventures for Earth observation system development and operations.

d. Citizen science and crowdsourced observations.

8. Is your organization concerned about a potential shortage of workers in the United States who are trained to develop, understand, or use Earth observation data and geospatial information? Please provide specific concerns.

9. What, if any, do you believe were the key accomplishments of the first National Plan and what impact did the National Plan have, if any, on your organization? Please provide specific examples.

10. The first National Plan identified eight Supporting Actions (pp. 20–27) required to maximize the benefits derived from the Nation's Earth observations. In priority order, they are:

Action 1: Coordinate and Integrate Observations
Action 2: Improve Data Access, Management, and Interoperability
Action 3: Increase Efficiency and Cost Savings
Action 4: Improve Observation Density and Sampling
Action 5: Maintain and Support Infrastructure
Action 6: Explore Commercial Solutions
Action 7: Maintain and Strengthen International Collaboration
Action 8: Engage in Stakeholder-Driven Data Innovation

Of the actions listed above most relevant to your work, where has the Federal Government been the most, or least, successful, and why? Please provide specific examples.

Ted Wackler,

Deputy Chief of Staff and Assistant Director.

[FR Doc. 2016–14186 Filed 6–14–16; 8:45 am]

BILLING CODE 3270–F6–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78027; File No. SR–Phlx–2016–64]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule Under Section VIII

June 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2016, NASDAQ PHLX LLC ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule under Section VIII, entitled "NASDAQ OMX PSX FEES," with respect to execution and routing of orders in securities priced at $1 or more per share.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend certain charges and credits for the use of the order execution and routing services of the NASDAQ OMX PSX System ("PSX") by member organizations for all securities traded at $1 or more per share. The Exchange is proposing to: (1) Add an additional Consolidated Volume[3] requirement to the existing fee tiers assessed a member organization that enters an order that executes in PSX; (2) add an new default fee assessed a member organization that enters an order that executes in PSX in the security of any Tape[4] of $0.0030 per share executed; and (3) delete text from the preamble of paragraph (a)(1) of Section VIII, Order Execution and

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Consolidated Volume is defined as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of, or ratio to, Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. *See* of Section VIII, Order Execution and Routing, paragraph (a)(1).

[4] There are three Tapes, which are based on the listing venue of the security: Tape C securities are Nasdaq-listed; Tape A securities are New York Stock Exchange-listed securities; and Tape B securities are listed on exchanges other than Nasdaq and NYSE.

Routing concerning Consolidated Volume.

First Change

The purpose of the first change is to add a new requirement to qualify for each of the existing fee tiers assessed a member organization that enters an order that executes in PSX. The Exchange currently assesses a member organization a fee of $0.0029 per share executed in Nasdaq-listed securities ("Tape C"), and fee of $0.0028 per share executed in NYSE-Listed Securities ("Tape A") and in securities listed on exchanges other than Nasdaq and NYSE ("Tape B"). These fees currently do not require a member organization to have met a performance measure in return for the fees, but rather are the "default" fees assessed for removal of liquidity from PSX. In light of the proposed new $0.0030 default removal fee discussed below, the Exchange is proposing to add a Consolidated Volume-based requirement to the existing fee tiers in order to qualify for the now-lower charges assessed member organizations for removing liquidity. Specifically, the Exchange is proposing to require a member organization to access 0.065% or more of Consolidated Volume during the month to be eligible to receive the lower charges assessed under the fee tiers.

Second Change

The purpose of the second change is to add a new default fee assessed a member organization that enters an order that executes in PSX in the security of any Tape. Currently, a member organization is assessed a fee of $0.0029 per share executed in Tape C securities, and fee of $0.0028 per share executed in Tape A and Tape B securities. The Exchange is proposing to assess a member organization that enters an order that executes in PSX a fee of $0.0030 per share executed in a security of any Tape.

Third Change

The purpose of the third change is to delete rule text from the preamble of paragraph (a)(1) of Section VIII, Order Execution and Routing, concerning Consolidated Volume. The rule currently defines Consolidated Volume as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. The Exchange excludes from the calculations of fees and credits that have a Consolidated Volume component all trading that occurs on the date of the annual reconstitution of the Russell Investments. The annual reconstitution represents a day of abnormal trading volume, as the Russell Investment indexes adjust holdings to accurately reflect the current state of equity markets and their market segments.[5] Consequently, the Exchange excludes the date of the Russell Investment reconstitution in all calculations of fees and credits because it is not reflective of a member organization's normal trading. The Exchange expresses this under the rule by stating that, "[f]or purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of, or ratio to, Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity." The Exchange believes that the text stating "expressed as a percentage of, or ratio to, Consolidated Volume" may be confusing to market participants in understanding how the Exchange excludes trading activity on the day of the Russell Investment reconstitution should the Exchange ever adopt a fee or credit tier based on a different measure of Consolidated Volume. Specifically, the Exchange seeks to clarify that all trading activity on the date of the Russell Investment reconstitution (including trading activity not based on a percentage or ratio of Consolidated Volume) is excluded from a member's trading activity for determining credit and fee tiers. This proposed change has no impact on PSX at this time, as all tiers under the rule are currently expressed as a percentage of Consolidated Volume; however, if the Exchange adopted a new metric, such as a certain nominal level of share volume (*e.g.,* a requirement to add 5 million shares), the Exchange wants to ensure that member organizations understand that all trading activity on the day of the Russell Investment reconstitution would be excluded for purposes of determining what fees and credits a member qualifies for.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed increases to the credits and charges in the fee schedule under the Exchange's Pricing Schedule under Section VIII are reflective of the Exchange's ongoing efforts to use pricing incentives to attract order flow to the Exchange and improve market quality, while also providing a profit to the Exchange through the operation of its market.

First Change

The Exchange believes that the proposed new requirement to qualify for each of the existing fee tiers assessed a member organization that enters an order that executes in PSX is reasonable because the Exchange is providing member organizations the ability to continue to have the ability to qualify for current lower removal fees. The Exchange uses credits and reduced fees to provide incentive to market participants to improve the markets. In the present case, the Exchange is adding to each of the existing fee tiers under the rule a new requirement that a member organization access 0.065% or more of Consolidated Volume during the month. Removal of liquidity adds to the price discovery process and therefore benefits all market participants. Consequently, the Exchange believes that requiring member organizations to improve the market through the removal of liquidity by a certain level of Consolidated Volume in return for lower liquidity removal fees is reasonable.

The Exchange believes that the proposed new requirement to qualify for each of the lower fee tiers assessed a member organization that enters an order that executes in PSX is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. The Exchange is not proposing to adjust the fee assessed for removal of the securities of each Tape, but rather is adding a new Consolidated Volume-based requirement in light of the proposed new $0.0030 per share executed fee, which will be the new "default" rate assessed member organizations for removal of liquidity. Thus, to qualify for a reduced fee in any of the amended fee tiers, a member organization must accesses 0.065% or more of Consolidated Volume during the month.

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[5] *See https://www.ftserussell.com/research-insights/russell-reconstitution.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

Second Change

The Exchange believes that the new base removal fee is reasonable because although it will increase the fee assessed to access liquidity on the Exchange, it is identical to the fee assessed by The NASDAQ Stock Market LLC ("Nasdaq") for removing liquidity in the securities of any Tape from the Nasdaq Market Center.[8] As a general principle, the Exchange must, from time to time, adjust the level of fees and credits provided to most efficiently allocate such fees and credits in terms of market-improving behavior. In this regard, the Exchange is limited in how far it may reduce fees and in the amount of credits that it can provide to market participants. In the present case, the Exchange has observed high levels of liquidity removal on PSX sufficient to allow the Exchange to increase removal fees, which will allow the Exchange to offer credits for market-improving behavior, and to realize a greater profit.

The Exchange believes that the increased removal fee is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. In this regard, the Exchange notes that the fee is uniform across the securities of all three Tapes. In addition, the Exchange will offer reduced fees for removal of liquidity, but in return for market improving behavior. Last, the Exchange believes that increasing the fee assessed does not discriminate unfairly because it is a modest increase that is consistent with the fee assessed for removing liquidity at other exchanges.

Third Change

The Exchange believes that deleting rule text from the preamble of paragraph (a)(1) of Section VIII, Order Execution and Routing, concerning Consolidated Volume is reasonable because it will help clarify how credit and fee tiers that rely on a calculation of Consolidated Volume will be handled by the Exchange during the annual Russell Indexes reconstitution. Currently, the rule text could be interpreted to apply to only a member organization's trading activity under a fee or credit tier that is expressed as a ratio or percentage of Consolidated Volume. The Exchange believes that, should it ever adopt a credit or fee tier based on another measure of Consolidated Volume, such an interpretation would undermine the Exchange's intent to exclude the abnormal trading activity that occurs on that day. Accordingly, the Exchange believes that it is reasonable to remove the potentially confusing rule text.

The Exchange believes that deleting rule text from the preamble of paragraph (a)(1) of Section VIII, Order Execution and Routing, concerning Consolidated Volume is an equitable allocation and is not unfairly discriminatory because the proposed change only serves to clarify the application of the rule and does not alter how Consolidated Volume is calculated. Thus, the Exchange will apply the same process to all similarly situated member organizations that seek to qualify under a fee or credit tier under the rule that relies on a calculation of Consolidated Volume.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the changes to the fees assessed for removing liquidity do not impose a burden on competition because the Exchange membership is optional and is the subject of competition from other exchanges. The increased charges are reflective of the intent to balance the fees that it assesses with the order flow it receives. For these reasons, the Exchange does not believe that any of the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants. As noted above, the proposed changes are consistent with similar fees assessed members of other markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2016–64 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–64. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

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[8] *See* Nasdaq Rules 7018(a)(1)–(3).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2016–64 and should be submitted on or before July 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14085 Filed 6–14–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78026; File No. SR–FINRA–2016–018]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rules 2210 (Communications With the Public), 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings), and 2214 (Requirements for the Use of Investment Analysis Tools)

June 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 25, 2016, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing amendments that would revise the filing requirements in FINRA Rule 2210 (Communications with the Public) and FINRA Rule 2214 (Requirements for the Use of Investment Analysis Tools) and the content and disclosure requirements in FINRA Rule 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

In April 2014, FINRA launched a retrospective review of its communications with the public rules to assess their effectiveness and efficiency. In December 2014, FINRA published a report on the assessment phase of the review.[3] The report concluded that, while the rules have met their intended investor protection objectives, they could benefit from some updating to better align the investor protection benefits and the economic impacts. To this end, FINRA recommended consideration of a combination of rule proposals, guidance and administrative measures, to enhance the efficiency of the rules with no reduction in investor protection.

Pursuant to these recommendations, FINRA initially is proposing amendments to the filing requirements in FINRA Rule 2210 and FINRA Rule 2214 and the content and disclosure requirements in FINRA Rule 2213.

Proposed Amendments

New Member Communications

FINRA Rule 2210(c)(1)(A) currently requires new FINRA members to file with FINRA retail communications used in any electronic or other public media at least 10 business days prior to use. This requirement extends for one year from the effective date of the firm's membership. This new firm filing requirement only applies to broadly disseminated retail communications, such as generally accessible Web sites, print media communications, and television and radio commercials.

While FINRA believes that the requirement for new members to file their broadly disseminated retail communications serves a useful purpose, since new members may not be as familiar with the standards that apply to retail communications as more established members, the requirement to file these communications at least 10 business days prior to use can delay members' abilities to communicate with the public in a timely manner according to FINRA. For example, if a new member wishes to update its public Web site with new information, the member must first file the proposed update with FINRA and wait at least 10 business days before it can post this update on its Web site. FINRA believes that such a delay may hinder its ability to communicate important information to its existing and prospective customers.

FINRA believes it can continue to protect investors from potential harm without imposing this time delay on new members by reviewing new members' communications on a post-use, rather than a pre-use, basis. FINRA has found a post-use filing requirement to be an effective investor protection approach for retail communications with similar risk profiles as FINRA typically sees from new members. Accordingly, FINRA proposes to revise the new member filing requirement to require new members to file retail communications used in electronic or other public media within 10 business days of first use for a one-year period, rather than requiring these filings at least 10 business days prior to use.[4]

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Retrospective Rule Report, Communications with the Public, December 2014.

[4] *See* proposed amendments to FINRA Rule 2210(c)(1)(A). This proposed change also would delete as redundant current rule text that permits a new member to file a retail communication that is a free writing prospectus filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii), within 10 business days of first use rather than at least 10 business days prior to first use.

Investment Company Shareholder Reports

FINRA currently requires members to file the management's discussion of fund performance ("MDFP") portion of a registered investment company shareholder report if the report is distributed or made available to prospective investors.[5] FINRA has required the MDFP to be filed because members sometimes distribute or make shareholder reports available to prospective investors to provide more information about the funds they offer. Thus, FINRA has considered the MDFP to be subject to the filing requirement for investment company retail communications.

Although Rule 2210 does not contain any express filing exclusion for investment company shareholder reports, FINRA has not required members to file portions of shareholder reports other than the MDFP, such as the financial statements or schedules of portfolio investments. FINRA has not regarded these other parts of investment company shareholder reports to be subject to the filing requirements of Rule 2210, since they serve a regulatory purpose rather than promoting the sale of investment company securities.

Investment companies already must file shareholder reports with the SEC,[6] and the MDFP typically presents less investor risk than other types of promotional communications concerning investment companies, since it usually focuses on the most recent period covered by the report rather than containing promotional content that is intended to encourage future investments. Accordingly, FINRA proposes to exclude from the FINRA filing requirements the MDFP by adding an express exclusion for annual or semi-annual reports that have been filed with the SEC in compliance with applicable requirements.[7] FINRA believes that it would assist members' understanding of Rule 2210 expressly to clarify that annual and semi-annual reports that have been filed with the SEC are not subject to filing. The rule already excludes prospectuses, fund profiles, offering circulars and similar documents that have been filed with the SEC. As such, FINRA believes it would be consistent to add shareholder reports that have been filed with the SEC to that list.

Offering Documents Concerning Unregistered Securities

Rule 2210(c)(7)(F) currently excludes from filing "prospectuses, preliminary prospectuses, fund profiles, offering circulars and similar documents that have been filed with the SEC or any state, *or that is exempt from such registration* . . ." (emphasis supplied). The filing exclusion is intended (and has been interpreted by FINRA) to exclude issuer-prepared offering documents concerning securities offerings that are exempt from registration.

Accordingly, FINRA is proposing to amend Rule 2210(c)(7)(F) to make this intent more clear, and to avoid any confusion concerning the phrase "or that is exempt from such registration." As revised, Rule 2210(c)(7)(F) would exclude from filing, among other things, "similar offering documents concerning securities offerings that are exempt from SEC or state registration requirements." While FINRA believes that this amendment will clarify this filing exclusion, it does not believe that it represents a substantive change to the current filing exclusion for unregistered securities' offering documents.

Backup Material for Investment Company Performance Rankings and Comparisons

A member that files a retail communication for a registered investment company that contains a fund performance ranking or performance comparison must include a copy of the ranking or comparison used in the retail communication.[8] When FINRA adopted this requirement, prior to the Internet, FINRA staff did not have ready access to the sources of rankings or comparisons. Today, this information typically is easily available online. FINRA therefore proposes to eliminate the requirement to file ranking and comparison backup material and instead expressly to require members to maintain back-up materials as part of their records.[9]

Generic Investment Company Communications

FINRA Rule 2210(c)(3)(A) requires members to file within 10 business days of first use retail communications "concerning" registered investment companies. FINRA proposes to revise this filing requirement to cover only retail communications that promote a specific registered investment company or family of registered investment companies. Thus, members would no longer be required to file generic investment company retail communications.

An example of such a generic communication would be a retail communication that describes different mutual fund types and features but does not discuss the benefits of a specific fund or fund family. This type of material typically is intended to educate the public about investment companies in general or the types of products that a member offers, and thus does not present the same risks of including potentially misleading information as promotional communications about specific funds or fund families.

Investment Analysis Tools

"Investment analysis tools" are interactive technological tools that produce simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken. Pursuant to FINRA Rules 2210(c)(3)(C) and 2214(a), members that intend to offer an investment analysis tool must file templates for written reports produced by, or retail communications concerning, the tool, within 10 business days of first use. Rule 2214 also requires members to provide FINRA with access to the tool itself, and provide customers with specific disclosures when members communicate about the tool, use the tool or provide written reports generated by the tool.

Since Rule 2214 became effective in 2005,[10] FINRA has found that members have largely complied with the Rule's requirements applicable to templates for written reports produced by investment analysis tools and retail communications concerning such tools. FINRA does not believe that the filing requirements for these templates and retail communications are necessary given this history and in light of the investor protection afforded by other content standards and the requirement that members provide access to the tools and their output upon request of FINRA staff. Accordingly, FINRA proposes to eliminate the filing requirements for investment analysis tool report templates and retail communications concerning such tools and instead require members to provide FINRA staff with access to investment analysis tools upon request.[11]

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[5] *See, e.g., Notice to Members* 99–79 (September 1999) ("[m]embers are not required to file shareholder reports with [FINRA] if they are only sent to current fund shareholders. However, if a member uses a shareholder report as sales material with prospective investors, the member must file the management's discussion of fund performance (MDFP) portion of the report (as well as any supplemental sales material attached to or distributed with the report) with the Department.").

[6] *See* Section 30 of the Investment Company Act of 1940 and Rules 30a–1 and 30b1–1 thereunder.

[7] *See* proposed amendments to FINRA Rule 2210(c)(7)(F). To the extent that a member distributes or attaches registered investment company sales material along with the fund's shareholder report, such material would remain subject to filing under Rule 2210.

[8] *See* FINRA Rule 2210(c)(3)(A).

[9] *See* proposed amendments to FINRA Rules 2210(b)(4)(A)(vi) and 2210(c)(3)(A).

[10] *See Notice to Members* 04–86 (November 2004).

Filing Exclusion for Templates

Members are not required to file retail communications that are based on templates that were previously filed with FINRA but changed only to update recent statistical or other non-narrative information.[12] However, members are required to re-file previously filed retail communications that are subject to filing under FINRA Rule 2210(c) to the extent that the member has updated any narrative information contained in the prior filing. Often these re-filed retail communications are templates for fact sheets concerning particular funds or products and provide quarterly information concerning a product's performance, portfolio holdings and investment objectives.

Through its review of updated fund fact sheets and other similar templates, FINRA has found that certain narrative information has not presented significant risk to investors, and that these narrative updates typically are consistent with applicable standards. In particular, narrative updates that are not predictive in nature and merely describe market events that occurred during the period covered by the communication, or that merely describe changes in a fund's portfolio, rarely have presented significant investor risks. In addition, members often will update narrative information concerning a registered investment company, such as a description of a fund's investment objectives, based on information that is sourced from the fund's regulatory documents filed with the SEC. In both cases, FINRA believes that the costs associated with filing these types of narrative updates exceed the investor benefits associated with FINRA staff review of these updates.

Accordingly, FINRA proposes to expand the template filing exclusion also to allow members to include updated non-predictive narrative descriptions of market events during the period covered by the communication and factual descriptions of portfolio changes without having to refile the template, as well as updated information that is sourced from a registered investment company's regulatory documents filed with the SEC.[13]

Bond Mutual Fund Volatility Ratings

FINRA Rule 2213 permits members to use communications that include ratings provided by independent third parties that address the sensitivity of the net asset value of an open-end management investment company's bond portfolio to changes in market conditions and the general economy, subject to a number of requirements. For example, these communications must be accompanied or preceded by the bond fund's prospectus and contain specific disclosures. Members currently must file retail communications that include bond mutual fund volatility ratings at least 10 business days prior to first use, and withhold them from publication or circulation until any changes specified by FINRA have been made.[14]

FINRA believes that some of these requirements have discouraged members from including bond fund volatility ratings in their communications due to the significant compliance burdens associated with doing so, and the level of disclosures required to accompany such ratings. FINRA has found that, since Rule 2213 first became effective in 2000,[15] members have rarely, if ever, filed communications that contain bond fund volatility ratings. In general, in the few cases in which members filed such communications with FINRA, the staff has found that they have met applicable standards.

Given that bond fund volatility ratings may provide useful information to investors, and that Rule 2213 as currently drafted appears to have discouraged members from including these ratings in their communications, FINRA believes it is appropriate to revise the rule to reduce some of these burdens while continuing to include requirements that it believes will protect investors. Accordingly, FINRA proposes to modify some of Rule 2213's requirements.

Consistent with the filing requirements for other retail communications about specific registered investment companies, the proposal would no longer require a retail communication that includes a bond fund volatility rating to be accompanied or preceded by a prospectus for the fund, and would permit members to file these communications within 10 business days of first use rather than prior to use.[16]

FINRA believes that the requirement that any retail communication including a bond fund volatility rating be accompanied or preceded by a fund prospectus increases the burdens associated with these communications without adding commensurate investor protection. Except in rare circumstances due to operational hardship, all mutual fund prospectuses are available online, and thus an investor can easily access the prospectus, if needed.

Similarly, FINRA believes that requiring members to file these retail communications at least 10 business days prior to use and to withhold them from publication or circulation until any changes specified by the Department have been made does not provide appreciably greater investor protection. According to FINRA, this pre-use filing requirement inhibits a member's ability to circulate retail communications containing volatility ratings in a timely manner. Moreover, members still would be required to file these communications within 10 business days of first use, so that if they contain misleading content, the Department staff can take appropriate measures to correct any problems, such as recommending changes to the communication, or directing the member to cease using the communication with the public. FINRA has found a post-use filing requirement to be an effective investor protection approach for most retail communications with similar risk profiles.[17]

The proposal also would streamline the content and disclosure requirements. In particular, the amendments would eliminate the requirements: (1) That all disclosures be contained in a separate Disclosure Statement; (2) to disclose all current bond mutual fund volatility ratings that have been issued with respect to the fund; (3) to explain the reason for any change in the current rating from the most recent prior rating; (4) to describe the criteria and methodologies used to determine the rating; (5) to include a statement that not all bond funds have volatility ratings; and (6) to include a statement that the portfolio may have changed since the date of the rating.

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[11] *See* proposed amendments to FINRA Rules 2210(c)(3) and 2214(a).

[12] *See* FINRA Rule 2210(c)(7)(B).

[13] *See* proposed amendments to FINRA Rule 2210(c)(7)(B).

[14] FINRA Rules 2210(c)(2)(C) and 2213(b) and (c).

[15] *See Notice to Members* 00–23 (April 2000).

[16] *See* proposed amendments to FINRA Rules 2210(c) and 2213(b). This change relates only to Rule 2213 and does not affect a member's obligation to deliver a prospectus under the Securities Act or for Investment Company Act companies.

[17] As a general matter, FINRA does not believe that retail communications that include bond fund volatility ratings present risks of investor harm that are comparable to other retail communications that require pre-use filing, such as retail communications that include self-created rankings or comparisons or retail communications concerning security futures. *See* FINRA Rule 2210(c)(2)(A) and (B). Retail communications that include self-created rankings or comparisons present a greater risk of being misleading than bond fund volatility ratings, since they are not created by an entity that is independent of the member. In addition, security futures are more complex and potentially more volatile than most bond mutual funds.

FINRA believes that many of these requirements are unnecessary in light of the content requirements that still will apply to such retail communications. For example, members still would not be permitted to refer to a volatility rating as a "risk" rating, and would have to incorporate the most recently available rating and reflect information that, at a minimum, is current to the most recent calendar quarter end. The criteria and methodology used to determine the rating still would have to be based exclusively on objective, quantifiable factors, and such communications would have to include a link to, or Web site address for, a Web site that includes the criteria and methodology. Communications would have to provide the name of the entity that issued the rating, the most current rating and date for the rating, and whether consideration was paid for the rating, as well as a description of the types of risks the rating measures.

FINRA believes that, as long as the required disclosures are provided, it is not necessary that they appear in a separate Disclosure Statement. FINRA also believes it is unnecessary to disclose all other current volatility ratings assigned to the advertised fund, since this requirement is not imposed under other similar rules. For example, FINRA Rule 2214 allows members to provide fund ranking information without also requiring the member to disclose all rankings assigned by other ranking entities. The other disclosure requirements add little understanding about the rating presented, while adding voluminous text to the retail communication. In addition, if an investor does seek more information about the criteria and methodology used to create the rating, this information will be available via a hyperlink to separate Web site.

If the Commission approves the proposed rule change, FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[18] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will improve efficiency and reduce regulatory burden by reducing the filing requirements applicable to retail communications distributed by members and streamlining the content and disclosure requirements for retail communications that include bond mutual fund volatility ratings, while maintaining necessary investor protections.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rulemaking, its potential economic impacts, including anticipated costs and benefits, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

Economic Impact Assessment

1. Regulatory Need

As discussed previously, based on the retrospective review of rules governing communications with the public, FINRA has identified several areas where updating the rules would better provide information that may be useful to investors while maintaining important investor protections.

2. Economic Baseline

The economic baseline used to evaluate the impact of the proposed amendments is the current regulatory framework. This baseline serves as the primary point of comparison for assessing economic impacts, including the incremental benefits and costs of the proposed rule change. To better understand the members affected by this proposal and the filings by these members, FINRA reviewed the filing history and its comments on the communications filed in 2014. Based on this review, 770 members filed communications with FINRA in 2014, and approximately 40% to 50% of these members filed communications specific to the requirements in this proposal.

In 2014, 79 members filed communications pursuant to the new firm filing requirement, 183 filed investment company shareholder reports, 155 filed backup material for investment company performance rankings and comparisons, 51 filed communications associated with investment analysis tools, 218 filed updated fund fact sheets or other similar templates, and three filed communications that included bond mutual fund volatility ratings.[19] Approximately 58% of the members that filed communications specific to the requirements in this proposal were small, whereas approximately 19% and 23% of the members were mid-sized and large, respectively.[20] In 2014, these members filed approximately 300 communications pursuant to the new firm filing requirement, 5,000 investment company shareholder reports, 13,500 filings of backup material for investment company performance rankings and comparisons, 590 filings related to investment analysis tools, and approximately 23,800 filings of applicable templates. These filings were largely concentrated amongst a few members that filed frequently. For example, the 20 members with the highest number of filings overall accounted for over 50% of the filings related to this proposal.

3. Economic Impacts

The proposed amendments would impact members that are subject to the filing, content and disclosure requirements in this proposal. As discussed above, approximately 40% to 50% of the 770 members that in 2014 filed communications specific to the requirements in this proposal. These members would be impacted directly by the proposed amendments.

i. Anticipated Benefits

The amendments will benefit members by reducing their costs associated with the filing requirements in this proposal. These cost savings would include savings on filing fees from the proposed elimination or reduction in the scope of certain filing requirements.

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[18] 15 U.S.C. 78*o*–3(b)(6).

[19] FINRA cannot precisely identify the number of members that filed generic investment company communications or the number of such filings. However, based on experience and review of filings in 2014, FINRA believes that the number of members that filed generic communications was approximately the same as the number of members that filed updated fund fact sheets or other similar templates.

[20] Based on FINRA By-Law, Article I (Definitions), members with 150 or fewer registered persons are classified as small, members with 151–499 persons are classified as mid-size, and members with 500 or more persons are classified as large.

Based on review of communication filings in 2014 and historical experience with such filings, FINRA preliminarily estimates that, as a result of the proposed amendments, there would be a reduction in the filings of investment company shareholder reports of 5,000 filings per year, and a potential decline in the filings of generic investment company communications of approximately 3,000 filings per year. FINRA further estimates that the anticipated decline in filings related to investment analysis tools and filings of templates would be approximately 500 and 13,000 filings per year, respectively.[21] Overall, FINRA estimates that as a result of the proposed amendments, the total communications filings would be reduced by 21,500 filings per year.

Accordingly, based on an average filing fee of $185 in 2014, FINRA preliminarily estimates that the proposed amendments would reduce the filing fees for members by approximately $4 million per year.[22] In addition to this reduction in filing fees, members would likely also benefit from a decrease in other direct costs associated with filings, such as staff, systems and infrastructure costs, or third-party legal and consulting fees associated with the requirements applicable to this proposal. Since these costs account for a significant proportion of members' overall direct costs, any reduction in these costs as a result of the proposed amendments could be material. For example, based on the survey results from the assessment phase of FINRA's retrospective rule review, FINRA estimates that the direct costs other than filing fees (such as staffing, systems and infrastructure costs, third-party legal and consulting fees) account for more than 90% of the overall advertising-related compliance costs for most members that file communications.[23] Accordingly, the overall reduction in direct costs associated with communication filings could be larger than the anticipated reduction in filing fees discussed above. Moreover, the proposed elimination or reduction in the scope of certain filing requirements may also reduce disruption in members' advertising efforts associated with these filings. In addition, the streamlined disclosure and content requirements for the presentation of bond fund volatility ratings in communications may save members additional costs associated with creating and reviewing disclosure.

The proposed amendments may generate benefits to the public as they may also encourage members to communicate additional valuable information to investors. For example, the elimination of the costs associated with the filing requirement for generic, educational communications regarding investment companies may encourage members to provide more frequent and timely information to investors. Similarly, the changes to the template exclusion from the filing requirement for investment company communications may enable members to provide investors with more timely explanations of market events as well as changes in a fund's portfolio, particularly for those firms that voluntarily file all retail communications prior to use and wait to receive the staff's response letter before distributing retail communications (instead of filing retail communications within 10 days of first use as required). Under the expanded filing exception for templates, it is likely that these firms may distribute the updated communications without choosing to file them, thus allowing them to communicate with investors sooner.

ii. Anticipated Costs

Members that are subject to the filing, content and disclosure requirements in this proposal would likely incur costs associated with updating their policies and procedures. These costs would include training their advertising review and other staff associated with communications with the public. Members may also need to make updates to systems to reflect changes in the filing requirements. FINRA, however, anticipates that these costs would likely be minimal relative to the cost savings from the proposed amendments. FINRA would also incur costs associated with updating its Advertising Regulation Electronic Files (AREF) system as well as training the relevant staff on the amendments in the proposal.

iii. Other Economic Impacts

FINRA also considered the potential negative impacts of the proposed amendments to investors. FINRA believes that the proposed exclusions and streamlining of filing requirements would not diminish investor protection because the applicable communications pose little risk to investors. For example, investment company shareholder reports, generic investment company retail communications, and non-predictive narrative descriptions about market events in report templates generally are low-risk communications in FINRA's view.

Some members choose to file some mutual fund advertising materials on a voluntary basis. Members that choose to do so base their decision on business needs and not FINRA requirements. The proposed rule change would not limit the ability of members to continue to make voluntary filings if they should deem them to be valuable.

4. Alternatives

In considering how to best meet its regulatory objectives, FINRA considered alternatives to particular features of this proposal. For example, FINRA considered narrowing the new member filing requirement to cover only public Web sites since new members primarily reach out to their existing and potential customers by developing Web sites. As discussed in more detail below, PIABA raised concerns about potential investor harm if FINRA only reviews new members' Web sites without reviewing other types of public media advertising, such as television and radio commercials and newspaper advertisement. FINRA reviewed the communications filing history and its comments on the communications filed by new members and found that a higher proportion of new member communications require revisions to be compliant with the applicable standards, compared to all filed communications. As a result, to maintain the same level of investor protection, FINRA has determined not to narrow the new member filing requirement to public Web sites.

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[21] Based on staff experience, FINRA believes that some members would continue to file communications even after the elimination of applicable filing requirements. FINRA's estimates for reduction in number of filings attempt to account for such voluntary filings.

[22] As discussed above, the relevant communication filings are largely concentrated amongst a few members that file frequently. Accordingly, the anticipated benefits, including reduction in filing fees and other direct costs associated with filing, would also largely accrue to these frequent filers.

[23] As part of the assessment phase of its retrospective review of FINRA's communications with the public rules, the staff conducted a survey of the entire membership to seek feedback on the effectiveness and efficiency of the rules, including direct and indirect costs associated with the current rules. Based on the survey responses, FINRA estimates that for approximately 52% of the members that file communications with FINRA, direct costs other than filing fees, such as staff, systems and infrastructure costs, or third-party legal and consulting fees, account for more than 90% of their overall direct costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Background

In May 2015, FINRA published *Regulatory Notice* 15–16 (the "*Notice*"), requesting comment on proposed amendments that would revise the filing requirements in FINRA Rule 2210 and FINRA Rule 2214 and the content and disclosure requirements in FINRA Rule 2213 (the "*Notice* proposal"). A copy of the *Notice* is attached as Exhibit 2a. The comment period expired on July 2, 2015. FINRA received 11 comments in response to the *Notice*. All but one commenter supported the proposal. A list of the commenters in response to the *Notice* is attached as Exhibit 2b, and copies of the comment letters received in response to the *Notice* are attached as Exhibit 2c.[24] A summary of the comments and FINRA's response is provided below.

Continuation of Retrospective Review

While many comments supported the proposal, some commenters recommended that FINRA continue its retrospective review of the communications rules to address other issues. Commenters urged FINRA to update the rules governing social media, mobile devices and electronic communications,[25] performance advertising,[26] the amount of disclosure required in print advertising,[27] the content standards under FINRA Rule 2210(d),[28] and options communications.[29]

Commenters also recommended that FINRA harmonize the differences between its communications rules and SEC rules governing investment adviser communications, particularly with respect to rules governing projections and performance information,[30] and that FINRA update its electronic filing system to allow members to file materials in other than PDF format.[31] Wells Fargo suggested that FINRA clarify what constitutes a "public appearance" under Rule 2210(f)(3). The ICI urged FINRA to codify clear disclosure standards for retail communications concerning closed-end funds and eliminate the filing requirement for these communications. The CAI recommended that FINRA take a more risk-based approach of differentiating communications that should be filed and reviewed, and those that should not.

While FINRA states that it appreciates these recommendations, FINRA does not believe it is necessary to address all of these issues as part of this proposed rule change. The amendments that FINRA has proposed in this filing are only the first step in addressing the results of the assessment phase of its retrospective review of the communications rules. FINRA continues to consider additional rule changes related to the areas raised by commenters and will address those topics as part of its future proposed rule changes, as appropriate.

New Member Filing Requirement

In addition to changing the filing requirement for new members from a pre-use to a post-use requirement, the *Notice* proposal would have narrowed the types of retail communications subject to this requirement. Currently new members must file all retail communications used in electronic or other public media, including radio and television advertisements, newspaper and magazine ads, and public Web sites. The *Notice* proposal would have narrowed the new member filing requirement to cover only public Web sites.

PIABA urged FINRA not to narrow the current new member filing requirements. PIABA stated that if FINRA reviews only new members' Web sites without reviewing other types of public media advertising, such as television and radio commercials and newspaper advertisements, investors potentially could be harmed. PIABA also noted that pre-use filing offers more investor protection than post-use filing, since pre-use filing allows FINRA staff to review communications prior to their distribution.

While the deficiencies noted by FINRA staff on new members' filed communications are still relatively low, the staff does find that a higher percentage of new members' communications require revisions to be compliant with applicable standards as compared with all communications filed with FINRA. Accordingly, FINRA has determined not to narrow the scope of public media communications required to be filed by new members.

Nevertheless, FINRA still believes it is appropriate to allow new members to file these communications on a post-use rather than a pre-use basis. In this regard, a post-use filing requirement allows new members to create and alter their public media communications in a timely manner (such as a change to a new member's Web site) without the need to wait for FINRA staff review before doing so. In addition, new members still would be required to approve public media communications prior to use, and such communications would remain subject to the communications rules' content standards. FINRA believes this revision appropriately balances the need to protect investors with making its communications rules less burdensome and resource-consuming for members.

Filing Exclusion for Shareholder Reports

FINRA currently requires members to file the MDFP portion of registered investment company shareholder reports. The *Notice* proposal would have amended FINRA Rule 2210(c)(7)(F) to exclude from filing annual and semi-annual shareholder reports that have been filed with the SEC.

Two commenters supported this proposed change on the ground that members are already required to file these reports with the SEC, and filing the MDFP with FINRA is therefore redundant and unnecessary.[32] The ICI noted that the proposed exclusion is somewhat ambiguous, since it appears to apply only if the report has been filed with the SEC prior to or perhaps contemporaneously with making the report available to prospective investors. The ICI noted that SEC rules require funds to file their reports with the SEC "not later than 10 days after the transmission to stockholders."[33]

PIABA opposed this change. PIABA asserted that SEC staff rarely reviews shareholder reports filed with the SEC given the volume of filings it receives on a daily basis, and that therefore FINRA should continue to require the MDFP to be filed and reviewed by FINRA staff.

FINRA agrees that this proposed change would not require members to file fund shareholder reports prior to or contemporaneously with making the reports available to prospective investors, as long as the reports are filed in compliance with SEC rule requirements. To clarify this intent, FINRA is modifying the proposed amendment to Rule 2210(c)(7)(F) to specify that such reports must be filed with the SEC "in compliance with applicable requirements."

FINRA has found through its filing program that the MDFPs in shareholder reports rarely have raised issues requiring members to revise or withdraw reports from circulation. FINRA also notes that, while the SEC may not review all securities-related filings contemporaneous with their submission, the staff can review higher risk communications as needed. FINRA believes that removing this filing requirement would not harm investors and would allow FINRA to allocate its staff resources more efficiently to focus on reviewing higher risk communications more expeditiously.

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[24] *See* Exhibit 2b for a list of abbreviations assigned to commenters.

[25] *See* CAI, Fidelity, SIFMA, TD Ameritrade, and Vanguard.

[26] *See* TD Ameritrade.

[27] *See* Fidelity and TD Ameritrade.

[28] *See* FSI.

[29] *See* TD Ameritrade.

[30] *See* Fidelity and Wells Fargo.

[31] *See* CAI.

[32] *See* ICI and Vanguard.

[33] *See* Investment Company Act Rule 30b2–1(a).

Backup Ranking Data

The *Notice* proposal would have eliminated the current requirement to include a copy of an investment company performance ranking or comparison used in any retail communication that contains such a ranking or comparison. TD Ameritrade supported the elimination of this requirement given that this information typically is available online. PIABA opposed this change, apparently believing that it would completely eliminate the requirement to file retail communications that contain performance rankings or comparisons, rather than merely eliminating the requirement to file the backup data.

FINRA continues to believe this change is appropriate and will relieve members of the additional burden of having to file backup ranking data, given the online availability of such data. The proposal will not eliminate the requirement to file retail communications that contain performance rankings or comparisons. In addition, the proposal would require members to maintain the backup materials for inspection. Accordingly, FINRA believes PIABA's concerns are misplaced.

Generic Investment Company Communications

Commenters generally supported the proposal to revise the filing requirement for retail communications concerning registered investment companies to cover only those communications that promote or recommend a specific registered investment company or family of registered investment companies.[34]

The CAI had a number of recommendations for changes and clarifications. First, it asked FINRA to confirm that the mere mention of the name of an investment company does not necessarily constitute the promotion or recommendation of the investment company, and that this determination needs to be made based on the full context of the communication. Second, it requested that FINRA clarify that the proposed change would exclude from filing generic retail communications concerning variable annuity contracts that do not promote or recommend a particular contract.

Third, it noted that this proposed change might have the unintended effect of increasing compliance costs for members, since members that create generic investment company communications would no longer file them, and thus other members that use these communications would no longer be able to rely on the principal approval exception contained in FINRA Rule 2210(b)(1)(C).[35] The CAI recommended that FINRA revise Rule 2210(b)(1)(C) to create an exception from the principal approval requirements for generic retail communications created by a third party, even if the third party has not filed it with FINRA. The CAI also suggested that FINRA consider creating a principal approval exception for any third-party communication that is reviewed and approved by another member.

The IPA recommended that FINRA create a similar filing exclusion for retail communications concerning unlisted real estate investment trusts (REITs) and direct participation programs (DPPs) that do not promote or recommend a particular product.

The determination of whether a retail communication promotes or recommends a specific registered investment company or family of investment companies will always be a facts-and-circumstances analysis. Accordingly, FINRA does not believe it would be productive to speculate whether particular types of retail communications that mention the name of a specific investment company would have to be filed.

The filing requirement for retail communications concerning registered investment companies applies to communications concerning mutual funds, exchange-traded funds, variable insurance products, closed-end funds, and unit investment trusts.[36] Accordingly, by its terms, this filing requirement would not apply to a retail communication concerning a variable annuity contract unless it promoted or recommended a specific contract or family of such contracts (*e.g.,* a retail communication concerning variable contracts that promoted or recommended a specific insurance company).

FINRA declines to revise the exception from the principal approval requirements for retail communications under FINRA Rule 2210(b)(1)(C). Part of the reason for this exception is that communications covered by this provision must have been filed with FINRA and received a letter stating that the communication appears consistent with applicable standards. FINRA does not believe an exception that excludes this filing requirement would offer the same level of investor protection.

FINRA also declines to create another filing exclusion for generic retail communications concerning REITs or DPPs. A filing exclusion for retail communications concerning REITs is unnecessary in FINRA's view, since FINRA Rule 2210 currently does not require retail communications concerning REITs to be filed. FINRA believes that DPPs often are more complex and less familiar to retail investors than registered investment companies; accordingly FINRA believes that a filing requirement for generic retail communications concerning DPPs still makes sense in light of the investor protection offered by this requirement.

Investment Analysis Tools

TD Ameritrade supported the proposed elimination of the current filing requirement for report templates and retail communications concerning investment analysis tools. However, it recommended that FINRA also eliminate the disclosure requirements in FINRA Rule 2214(c) for retail communications that promote investment analysis tools.[37] TD Ameritrade also stated that FINRA staff has inappropriately applied Rule 2214 to retirement planning calculators.

FINRA does not believe it is necessary to revise Rule 2214(c) as suggested. Rule 2214.06 already provides that a retail communication that contains only an incidental reference to an investment analysis tool need not include the disclosures required by Rule 2214(c). In addition, Rule 2214.06 provides that if a retail communication refers to an investment analysis tool in more detail but does not provide access to the tool or the results generated by the tool, the retail communication may exclude some of the disclosures required by Rule 2214(c). FINRA believes this provision already provides appropriate flexibility and regulatory relief for retail communications concerning investment analysis tools.

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[34] *See* CAI, TD Ameritrade, and Vanguard.

[35] Rule 2210(b)(1)(C) provides that the principal approval requirements do not apply to a retail communication if (i) another member has filed it with FINRA and received a letter from FINRA stating that it appears consistent with applicable standards, and (ii) the member using it in reliance upon this exception has not materially altered it and will not use it in a manner inconsistent with the conditions contained in the FINRA review letter.

[36] *See* FINRA Rule 2210(c)(3)(A).

[37] FINRA Rule 2214(c) requires written reports generated by investment analysis tools and related retail communications to: (1) Describe the criteria and methodology used, including the tool's limitations and key assumptions; (2) explain that results may vary with each use and over time; (3) if applicable, describe the universe of investments considered in the analysis, explain how the tool determines which securities to select, disclose if the tool favors certain securities and, if so, explain the reason for the selectivity, and state that other investments not considered may have characteristics similar or superior to those being analyzed; and (4) display a specific legend regarding the hypothetical nature of the projections created by the tool.

As for the comment that FINRA staff has inappropriately applied current Rule 2214 to retirement planning calculators, FINRA believes that these concerns are best addressed through discussions with FINRA staff rather than through a proposed change to Rule 2214.

Template Filing Exclusion

Multiple commenters supported the proposed change to the current filing exclusion for templates contained in FINRA Rule 2210(c)(7)(B), which currently does not require a member to file a retail communication that is based on a template that was previously filed with FINRA and where the changes are limited to updates of more recent statistical and other non-narrative information.[38] The *Notice* proposal would have allowed a member that had previously filed a retail communication template also to update non-predictive narrative information that describes market events during the period covered by the communication or factual changes in portfolio composition.

The CAI recommended that FINRA allow members to make non-material changes to narrative disclosures, as well as updates to non-predictive descriptions of market events and market commentary. Two other commenters recommended that the filing exclusion for templates be revised to allow members to include other non-predictive narrative information, provided that it comes from either an independent data provider or is sourced from an investment company's regulatory documents filed with the SEC.[39]

PIABA opposed the proposed change to the template filing exclusion, arguing that funds sometimes write misleading descriptions of market events to explain losses in a fund's net asset value. PIABA gave as an example of this practice a 2007 FINRA enforcement action involving a fund fact sheet.

FINRA Rule 2210(c)(7)(A) already contains a filing exclusion for retail communications that previously were filed with FINRA and that are used without material change. Accordingly, FINRA does not believe it is necessary to revise the proposed change to Rule 2210(c)(7)(B) to allow non-material changes.

FINRA agrees that it makes little sense for members to refile previously filed templates if the only changes to the template are sourced from an investment company's regulatory documents filed with the SEC. For example, if a fund alters the description of its investment objectives in its prospectus and files these changes with the SEC, and a member wants to make a corresponding change to a previously filed fact sheet concerning the fund, there is little need to file such an update with FINRA.

Accordingly, FINRA is revising its proposed changes to the template filing exclusion also to cover updated information that is sourced from an investment company's regulatory documents filed with the SEC. FINRA declines to expand this filing exclusion also to cover any information that comes from an independent data provider regardless of its source, as that information is not subject to the same level of regulatory scrutiny as information in documents required by SEC rules. Therefore, if a narrative change to a template is not sourced from SEC filings, FINRA believes that such changes should require the member to refile the template, even if this information comes from an independent third-party data provider.

FINRA recognizes that it is always possible that a member will use this filing exclusion to include non-predictive narrative information that is misleading in nature. Nevertheless, FINRA has found over the years from reviewing thousands of template updates that non-predictive narrative information concerning market events or portfolio composition has rarely generated comments from the staff and generally has been low-risk in nature. Based on this experience, FINRA believes the proposed changes to the template filing exclusion will improve staff efficiency without sacrificing investor protection. Moreover, any updates to templates remain subject to Rule 2210's content standards. Accordingly, if a member did prepare a misleading update to a template, FINRA could still reach that conduct and bring an action for violation of the communications with the public rules.

Bond Fund Volatility Ratings

PIABA urged FINRA not to modify Rule 2213's requirements applicable to retail communications that include a bond mutual fund volatility rating. PIABA argued that past FINRA enforcement actions involving the sale of bond funds demonstrate that bond funds should be more highly regulated.

FINRA disagrees with this comment. The proposed changes to Rule 2213 will not eliminate the filing requirement for any retail communication concerning bond funds, regardless of whether such filing includes a volatility rating. Even with the changes, members will still be required to file retail communications that contain a bond fund volatility rating within 10 business days of first use. Moreover, as revised, Rule 2213 would still require members to include many disclosures concerning the risks and limitations of such ratings. Accordingly, FINRA believes that revised Rule 2213 still would offer ample protection to investors and involve FINRA staff review of such communications.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2016–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

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[38] *See* CAI, ICI, and TD Ameritrade.

[39] *See* Fidelity and ICI. The ICI suggested that this revision only cover data received from "ranking entities" as that term is defined in FINRA Rule 2212, rather than any third-party data provider.

Commission, 100 F Street NE.,
Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–018 and should be submitted on or before July 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14084 Filed 6–14–16; 8:45 am]

BILLING CODE 8011–01–P

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[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78029; File No. SR–NYSEMKT–2016–45]

Self-Regulatory Organizations; NYSE MKT LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify the NYSE Amex Options Fee Schedule With Respect to Fees, Rebates, and Credits for Transactions in the Customer Best Execution Auction

June 9, 2016.

I. Introduction

On April 11, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–NYSEMKT–2016–45) to modify the NYSE Amex Options Fee Schedule with respect to fees, rebates, and credits relating to the Exchange's Customer Best Execution Auction ("CUBE Auction"),[3] and to increase credits available under the Exchange's Amex Customer Engagement Program ("ACE Program").[4] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[5] Notice of filing of the proposed rule change was published in the **Federal Register** on April 26, 2016.[6] Under Section 19(b)(3)(C) of the Act,[7] the Commission is (1) hereby temporarily suspending File No. SR–NYSEMKT–2016–45, and (2) instituting proceedings to determine whether to approve or disapprove File No. SR–NYSEMKT–2016–45.

II. Summary of the Proposed Rule Change

The Exchange's proposal amended certain fees, rebates, and credits relating to executions through its CUBE Auction. First, the proposal increased the fees assessed by the Exchange for RFR Responses (*i.e.,* orders and quotes submitted during a CUBE Auction that are executed against the agency order).[8] Specifically, the Exchange increased RFR Response fees for Non-Customers (including Market Makers) from $0.12 to $0.70 for classes subject to the Penny Pilot[9] ("Penny classes") and from $0.12 to $1.05 for classes not subject to the Penny Pilot ("Non-Penny classes").

Further, the proposal increased a rebate available to Initiating Participants in CUBE Auctions (*i.e.,* ATP Holders that initiate such auctions)[10] under the Exchange's ACE Program. Specifically, the proposal increased the rebate paid to Initiating Participants that meet certain tiers of the ACE Program from $0.05 to $0.18 (the "ACE Initiating Participant Rebate") for each of the first 5,000 Customer contracts of an agency order executed in a CUBE Auction.[11]

Finally, the proposal increased the credit paid by the Exchange to Initiating Participants (the "break-up credit") for each contract in the contra-side order that is paired with the agency order that does not trade with the agency order because it is replaced in the auction. Prior to the proposal, the credit granted was $0.05 per contract in all classes. The proposal raised it to $0.35 for Penny classes and $0.70 for Non-Penny classes.[12]

In its filing, the Exchange stated that the changes to the CUBE Auction transaction fees are reasonable, equitable and not unfairly discriminatory "because they apply equally to all ATP Holders that choose to participate in the CUBE, and access to the Exchange is offered on terms that are not unfairly discriminatory."[13] The Exchange also took the position, with regard specifically to the ACE Initiating Participant Credit, that the change is reasonable, equitable, and not unfairly discriminatory because it is "designed to attract more volume and liquidity to the Exchange generally, and to CUBE Auctions specifically," which, according to the Exchange, "would benefit all market participants . . . through increased opportunities to trade at potentially improved prices as well as enhancing price discovery."[14] The Exchange believes that its proposal is reasonable because it is similar to the fee and credit structures previously applied to the CUBE Auction and to fees charged for similar auctions on other exchanges.[15] The Exchange further stated that the proposal "would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants."[16] Finally, the Exchange does not believe the proposal would impose any unnecessary or inappropriate burden on competition because it is "pro-competitive" and "designed to incent increases in the number of CUBE Auctions brought to the Exchange," thereby "benefit[ting] all Exchange participants through increased opportunities to trade as well as enhancing price discovery."[17]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The CUBE Auction is a mechanism in which an Exchange ATP Holder submits an agency order on behalf of a customer for price improvement, paired with a contra-side order guaranteeing execution of the agency order at or better than the National Best Bid or Offer ("NBBO") depending on the circumstances. The contra-side order could be for the account of the ATP Holder that initiated the CUBE Auction ("Initiating Participant"), or an order solicited from another participant. The agency order is exposed for a random period of time between 500 and 750 milliseconds in which other ATP Holders submit competing interest at the same price as the initial price or better ("RFR Responses"). The Initiating Participant is guaranteed at least 40% of any remainder of the order (after public customers and better-priced RFR Responses) at the final price for the CUBE order. *See* NYSE MKT Rule 971.1NY.

[4] Under the ACE Program, credits are available to ATP Holders that bring customer orders to the Exchange based on the percentage (by tier) of national industry customer volume those customer orders comprise. *See* NYSE Amex Options Fee Schedule Section I.E.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] *See* Securities Exchange Act Release No. 77658 (April 20, 2016), 81 FR 24674 ("Notice").

[7] 15 U.S.C. 78s(b)(3)(C).

[8] *See supra* note 3 and NYSE Amex Options Fee Schedule, Section I.G.

[9] *See* Commentary .02 to NYSE MKT Rule 960NY. *See also* Securities Exchange Act Release No. 75281 (June 24, 2015), 80 FR 37338 (June 30, 2015) (SR–NYSEMKT–2015–43) (extending the Penny Pilot through June 30, 2016).

[10] *See supra* note 3.

[11] *See* NYSE Amex Options Fee Schedule, Section I.G.

[12] *See id.* Separate from its proposed changes to CUBE Auction fees and credits, the Exchange's proposal also increased certain credits available through its ACE Program with respect to non-CUBE transactions. *See* Notice, *supra* note 6, at 24674–75. *See also* NYSE Amex Options Fee Schedule, Section I.E.

The Commission has received no comment letters on the Exchange's proposed rule change.

III. Suspension of SR–NYSEMKT–2016–45

Pursuant to Section 19(b)(3)(C) of the Act,[18] at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,[19] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission is concerned about the potential effect the proposal may have on the operation of the CUBE Auction and its potential to provide price improvement to customers, as well as on competition among participants initiating CUBE Auctions and those responding to them. The Commission notes that the proposal raised the RFR Response fee for Non-Customer auction responders to $0.70 per executed contract in Penny classes ($1.05 in Non-Penny classes) while leaving the fee for the Initiating Participant at $0.05 per executed contract, the same as it was prior to the proposed rule change.[20] In temporarily suspending the proposal, the Commission intends to further assess whether the new RFR Response fees for Non-Customers are consistent with the statutory requirements applicable to a national securities exchange under the Act. In addition, the Commission intends to further assess whether the differential between the new RFR Response fees and the net fees or rebates applicable to Initiating Participants are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will assess, among other things, whether the proposal satisfies the statutory provisions that require exchange rules to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities;[21] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;[22] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[23]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEMKT–2016–45

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)[24] and 19(b)(2) of the Act[25] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the significant legal and policy issues raised by the proposal as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[26] the Commission is providing notice of the following grounds for disapproval that are under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,"[27]
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to perfect the operation of a free and open market and a national market system" and "protect investors and the public interest," and not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers,"[28] and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or

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[13] *See* Notice, *supra* note 6, at 24675.

[14] *See id.* at 24675–76.

[15] *See id.* at 24675 & n.10.

[16] *See id.* at 24676. The Exchange stated that the CUBE fee and credit adjustments established by the instant proposal are consistent with the fees and credits that were in place for the same items in its Fee Schedule prior to February 2016. *See id.* at 24675 n.6.

[17] *See id.* at 24676. The Exchange also noted that it operates in a highly-competitive market. *See id.*

[18] 15 U.S.C. 78s(b)(3)(C).

[19] 15 U.S.C. 78s(b)(1).

[20] *See* Notice, *supra* note 6, at 24675. The amended fees thus create a fee differential between the Initiating Participant and certain auction responders of $0.65 in Penny classes and $1.00 in Non-Penny classes. Taking into consideration that the ACE rebate that may be available to an Initiating Participant submitting the agency order into the CUBE Auction is increased to $0.18 (*see* text accompanying *supra* notes 10–11), this fee differential may be widened further. For example, under the proposal, an Initiating Participant that executes 100% of the agency order in a Penny class is charged a $0.05 per contract transaction fee and, if applicable, receives a $0.18 per contract rebate (subject to a 5,000 contract cap). This results potentially in a net fee that awards a $0.13 per contract rebate to an Initiating Participant that executes 100% of its customer's order. In contrast, an auction responder in a Penny class is charged a $0.70 per contract transaction fee, also its net fee. Comparing the net fees charged to the Initiating Participant and Non-Customer auction responders, the potential disparity in Penny classes is $0.83 per contract.

[21] 15 U.S.C. 78f(b)(4).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78f(b)(8).

[24] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[25] 15 U.S.C. 78s(b)(2).

[26] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *Id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *Id.*

[27] 15 U.S.C. 78f(b)(4).

[28] 15 U.S.C. 78f(b)(5).

appropriate in furtherance of the purposes of [the Act]."[29]

As discussed above, the proposal, among other things, increased the RFR Response fee for Non-Customer auction responders from $0.12 to $0.70 for Penny classes, and from $0.12 to $1.05 for Non-Penny classes, while leaving the fee for Initiating Participants unchanged at $0.05 per executed contract. At the same time, the proposal increased the rebate available to an Initiating Participant from $0.05 to $0.18 per executed contract so that, when it qualifies for this rebate, the Initiating Participant receives a net payment of $0.13 per contract to participate in the CUBE Auction.[30] Accordingly, the fee differential between Non-Customer auction responders and Initiating Participants can be $0.83 per executed contract for Penny classes, and $1.18 per contract for Non-Penny classes. Further, the Exchange increased the break-up credit payable to an Initiating Participant that does not execute all of the agency order it brings to a CUBE Auction, due to the participation of an auction responder, from $0.05 to $0.35 in Penny classes, and from $0.05 to $0.70 in Non-Penny classes, for each contract not executed.

The Exchange justifies the proposal on the grounds that it would create incentives for Initiating Participants to bring customer orders to the Exchange, and thereby benefit all members by providing more trading opportunities, potential price improvement, tighter spreads, and enhanced market quality. The Commission acknowledges that increasing the rebates and break-up credits provided to Initiating Participants likely would strengthen their incentives to bring customer orders to the Exchange. On the other hand, substantially increasing the fees paid by Non-Customer auction responders would appear to deter them from participating in CUBE Auctions. In Penny classes, for example, the fee charged Non-Customer auction responders would exceed one-half the minimum trading increment, and the economic differential between such auction responders and the Initiating Participants with whom they are competing would be even more. Accordingly, the Commission believes questions are raised as to whether the proposal would in fact provide the additional trading opportunities for non-Initiating Participants and other market quality benefits suggested by the Exchange.

As to the specific statutory standards, the Exchange takes the position that its proposed fee changes are reasonable, equitable, and not unfairly discriminatory because they apply to all members that choose to participate in the CUBE Auction, and that access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange's justification, however, does not address a key aspect of its proposal, namely the fact that it would substantially exacerbate the differences in the fees assessed by the Exchange on Initiating Participants and non-Initiating Participants, raising issues, among other things, as to whether the proposal is equitable and not unfairly discriminatory *among* Exchange members. While the Exchange states that the proposal also would provide all members additional trading opportunities and other market quality benefits, as discussed above, the reasoning behind this assertion is not clear and the Exchange has offered no supporting data. Furthermore, the Exchange does not address in any detail the increases in the break-up credit payable to Initiating Participants for *not* executing transactions on the Exchange, and why that payment is reasonable, equitable, and not unfairly discriminatory.

With respect to the statutory requirement that the proposal not impose any unnecessary or inappropriate burden on competition, the Exchange makes similar arguments, asserting that its proposal is pro-competitive because it would incent Initiating Participants to bring customer orders to the Exchange, provide more trading opportunities, and improve market quality, all within the competitive environment in which the Exchange does business. The Exchange's justification, however, does not address the potential burden on competition that its proposed fee changes would have on competition between Initiating Participants and non-Initiating Participants, and the prospect that, by substantially increasing the auction response fees paid by non-Initiating Participants, competition in CUBE Auctions could be impaired.

The Commission believes that the concerns discussed herein raise questions as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; or not impose an unnecessary or inappropriate burden on competition.[31]

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by July 5, 2016. Rebuttal comments should be submitted by July 19, 2016. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[32]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment and data on the following:

- The impact of the proposed fee changes on incentives for non-Initiating Participants to respond in the CUBE Auction;
- The impact of the proposed fee changes on incentives for non-Initiating Participants that respond in the CUBE Auction to offer price improvement;
- The impact of the proposed fee changes on incentives for Initiating Participants to submit Customer orders in the CUBE Auction;
- The impact of the proposed fee changes on the prices at which Initiating Participants submit Customer orders in the CUBE Auction;
- The impact of the proposed fee changes on the quoting behavior of market makers on the Exchange;
- The impact of the proposed fee changes on Exchange market quality;
- Whether the Commission should undertake a broader review of the fee structures applied by the options exchanges to their price improvement auctions;
- Whether the Commission should view a specific auction response fee level for Penny classes, such as an amount exceeding half the minimum trading increment, as presumptively

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[29] 15 U.S.C. 78f(b)(8).

[30] *See supra* note 20 and accompanying text.

[31] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[32] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

unreasonable, unfairly discriminatory, imposing an unnecessary or inappropriate burden on competition, or otherwise inconsistent with the Act;

- Whether transaction fees that exceed half of the minimum trading increment in Penny classes make participation uneconomical for potential auction responders, given that they may not be able to compete with the Initiating Participant at the same trading increment due to the impact of such fees;
- Whether there should be a specific auction response fee level that, for Non-Penny classes, should be viewed as presumptively inconsistent with the Act and, if so, what that fee level should be;
- Whether the Commission should view a specific differential in the net fees imposed by an exchange on Initiating Participants and potential auction responders as presumptively inconsistent with the Act and, if so, what that differential should be; and
- Whether the Commission should view break-up credits, which are paid to Initiating Participants for not executing a transaction, as presumptively inconsistent with the Act.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–45 and should be submitted on or before July 5, 2016. Rebuttal comments should be submitted by July 19, 2016.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[33] that File No. SR–NYSEMKT–2016–45 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14086 Filed 6–14–16; 8:45 am]

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[33] 15 U.S.C. 78s(b)(3)(C).

[34] 17 CFR 200.30–3(a)(57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78024; File No. SR–BOX–2016–23]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Make Non-Substantive Clerical Amendments

June 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2016, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule to make non-substantive clerical amendments. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on June 1, 2016. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Non-Auction Transactions

The Exchange proposes to amend Section I (Non-Auction Transactions) of the BOX Fee Schedule to clarify what volume on BOX will count towards the monthly volume tier in Section I.A.1 of the Box Fee Schedule. The Exchange proposes to add language to the first paragraph of Section I.A.1 to clarify that percentage thresholds will be calculated on a monthly basis by totaling the Market Maker or Public Customer's executed Auction and Non-Auction transaction volume on BOX, relative to the total national Market Maker or Customer volume in multiply-listed options classes.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

The Tiered Volume Rebate for Non-Auction Transactions has been in place since November 2014[5] and was amended in November 2015[6] to calculate percentage thresholds on a monthly basis by totaling the Market Maker or Public Customer's executed volume on BOX, relative to the total national Market Maker or Customer volume in multiply-listed options classes. The Exchange believes this additional language will reduce investor confusion about how the percentage thresholds are calculated with respect to non-auction transactions.

Liquidity Fees and Credits

The Exchange also proposes to amend Section II (Liquidity Fees and Credits) of the BOX Fee Schedule to make non-substantive clerical changes. Specifically, in Section II of the Fee Schedule, the Exchange proposes to delete the second and third paragraphs that detail which non-auction orders will be considered to add or remove liquidity with regard to fees and credits. The Exchange believes this text is now obsolete, as non-auction transactions are no longer subject to Liquidity Fees and Credits and removing the language will reduce investor confusion about the applicable fees for non-auction transactions.[7]

Liquidity Fees and Credits have been in place on BOX since its inception in 2012. For non-auction transactions, these fees and credits were applied to any order, including an order with a Fill and Kill designation and were in addition to the Exchange fees in Section I of the BOX Fee Schedule. Orders which executed against an order that was being exposed before being placed on the BOX Book were considered to add liquidity. On the contrary, any order, including an order with a Fill and Kill designation, that removed liquidity by trading immediately upon entry to the BOX Book or following its exposure as part of NBBO filtering, received a credit.[8] However, with the adoption of the new exchange fee pricing structure for non-auction transactions in 2014,[9] the Exchange removed all liquidity fees and credits for non-auction transactions. The Exchange believes that deleting these paragraphs will provide clarity and will also eliminate confusion among market participants, which is in the interest of all investors and the general public.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. In particular, the Exchange believes it is reasonable and appropriate to add language to Section I.A.1 and remove language from Section II because doing so will eliminate any potential for investor confusion. The Exchange believes that the proposed changes are reasonable, equitable and not unfairly discriminatory because it treats all market participants equally and will not have an adverse impact on any particular market participant.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to make non-substantive changes to the BOX Fee Schedule, thereby reducing confusion and making the Exchange's Fee Schedule easier to understand. The Exchange believes that the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[11] and Rule 19b–4(f)(2) thereunder,[12] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2016–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–23, and should be submitted on or before July 6, 2016.

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[5] *See* Securities Exchange Act Release No. 73547 (November 6, 2014), 79 FR 67520 (November 13, 2014) (Notice of Filing and Immediate Effectiveness SR–BOX–2014–25).

[6] *See* Securities Exchange Act Release No. 76447 (November 16, 2015), 80 FR 72758 (November 20, 2015) (Notice of Filing and Immediate Effectiveness SR–BOX–2015–36).

[7] *See supra* note 1 [sic].

[8] *See* Securities Exchange Act Release No. 66979 (May 14, 2012), 77 FR 29740 (May 18, 2012) (Notice of Filing and Immediate Effectiveness SR–BOX–2012–002).

[9] *See supra* note 1 [sic].

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14083 Filed 6–14–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14742 and #14743]

Louisiana Disaster #LA–00064

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Louisiana dated 06/09/2016.

Incident: Severe Weather and Straight-line Winds.

Incident Period: 05/19/2016.

Effective Date: 06/09/2016.

Physical Loan Application Deadline Date: 08/08/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 03/09/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Parish: Assumption.

Contiguous Parishes:

Louisiana: Ascension, Iberia, Iberville, Lafourche, Saint James, Saint Martin, Saint Mary, Terrebonne.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.250
Homeowners without Credit Available Elsewhere	1.625
Businesses with Credit Available Elsewhere	6.250
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14742 B and for economic injury is 14743 0.

The State which received an EIDL Declaration # is Louisiana.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: June 9, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–14131 Filed 6–14–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9603]

Pilot Test of DS–2031 Into International Trade Data System

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs, Office of Marine Conservation (OES/OMC), Department of State.

ACTION: Notice of request for public comment.

SUMMARY: OES/OMC announces a pilot test of the International Trade Data System (ITDS) involving the electronic submission of forms and/or data related to importations of shrimp and shrimp products using the Partner Government Agency (PGA) Message Set and Document Image System (DIS) components of the Automated Commercial Environment (ACE). The U.S. Customs and Border Protection (CBP) and OES/OMC have developed a pilot plan to test and assess the electronic transmission of import data for shrimp and shrimp products. The pilot test will involve using the ACE, the OMC PGA Message Set, the DIS and the Automated Broker Interface (ABI) to transmit the data required for admissibility determinations for entries of shrimp and product of shrimp. ABI is the electronic data interchange that enables participants to file electronically required import data with CBP and transfers that data into ACE. Initially, under this test, OMC PGA Message Set data may be submitted only for formal and informal consumption entries (entry types 01 and 11), filed at certain ports.

DATES: The test will commence after July 25, 2016, and will continue until concluded by publication of a notice in the **Federal Register** ending the test. Participants should consult the following Web site for additional information regarding pilot status: *https://www.cbp.gov/trade/ace/features (see the PGA Integration tab).* Comments will be accepted through the duration of the test.

ADDRESSES: To submit comments concerning this test program, send an email to Josephine Baiamonte (*Josephine.Baiamonte@dhs.gov*), Director, Business Transformation, ACE Business Office (ABO), Office of International Trade. In the subject line of the message, please use "Comment on PGA Message Set Test FRN". Any party seeking to participate in the PGA Message Set test should contact their client representative. Interested parties without an assigned client representative should submit an email to Steven Zaccaro at *steven.j.zaccaro@cbp.dhs.gov* with the subject "PGA Message Set Test FRN-Request to Participate".

FOR FURTHER INFORMATION CONTACT: For technical questions related to ACE or ABI transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to Steven Zaccaro at *steven.j.zaccaro@cbp.dhs.gov.* For PGA related questions, contact Emi Wallace (CBP) at *emi.r.wallace@cbp.dhs.gov* and for OMC-related questions contact the Section 609 Program Manager at *DS2031@state.gov.*

SUPPLEMENTARY INFORMATION:

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[13] 17 CFR 200.30–3(a)(12).

Background

I. The National Customs Automation Program (NCAP)

NCAP was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (Customs Modernization Act). See 19 U.S.C. 1411. Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of ACE, the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace a specific legacy ACS function. Each release will begin with a test and will end with mandatory use of the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases and sets the foundation for subsequent releases. ABI allows participants to electronically file required import data with CBP and transfers that data into ACE.

II. ITDS

This test is in furtherance of the ITDS, which is statutorily authorized by section 405 of the Security and Accountability for Every (SAFE) Port Act of 2006, Public Law 109–347. The purpose of ITDS, as defined by section 4 of the SAFE Port Act of 2006, is to eliminate redundant information filing requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies.

III. PGA Message Set

The PGA Message Set consists of the data needed to satisfy the PGA reporting requirements. For purposes of this test, the affected PGA is OMC. ACE enables the message set by acting as the "single window" for the one-time submission of trade-related data required by the PGAs to CBP. The data must be submitted at any time prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States as part of an ACE Entry/Cargo Release or Entry Summary. The data will be validated and made available to the relevant PGAs involved in import, export, and transportation-related decision making. The data will be used to fulfill merchandise entry and entry summary requirements and will allow for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery. Also, by virtue of being electronic, the PGA Message Set will eliminate the necessity for the submission and subsequent handling of paper documents. All PGA Message Set participants are required to use a software program that has completed ACE certification testing for the PGA Message Set. Alternatively, test participants may transmit required PGA data using the DIS as ACE is ready to receive imaged copies of OMC forms and documents through the DIS. For information regarding the use of DIS, and for a list of PGA forms and documents which may be transmitted to ACE using DIS, please see *http://www.cbp.gov/trade/ace/features* and 80 FR 62082 (October 15, 2015). The PGA data elements comprising the test are generally those found in the current paper form (Department of State Form 2031, Shrimp Exporter's/Importer's Declaration, or DS–2031), which currently is required to accompany all shipments of shrimp and shrimp products into the United States pursuant to Section 609 of Public Law 101–162 (Sec. 609). These data elements are set forth in the supplemental Customs and Trade Automated Interface Requirements (CATAIR) guidelines for OMC. These technical specifications, including the CATAIR chapters, can be found at the following link: *http://www.cbp.gov/trade/ace/catair*. Test participants and interested parties should consult *https://www.cbp.gov/trade/ace/features* for the most up to date information pertaining to the test.

IV. The OMC Test

This ITDS test is in furtherance of key CBP ITDS initiatives as provided in SAFE Port Act of 2006. The goal is to establish ACE as the "single window" for the Government and trade community by automating and enhancing the interaction between international trade partners, CBP, and PGAs by facilitating electronic collection, processing, sharing, and review of trade data and documents required by Federal agencies during the cargo import and export process. Processing trade data through ITDS and ACE will significantly increase efficiency and reduce costs over the manual, paper-based interactions that are currently in place. The PGA Message Set and DIS will improve communication between OMC and entry filers regarding imports and, for eligible entries, will allow test participants to submit the required data once, resulting in quicker processing. During this test, pilot participants will collaborate with CBP and OMC to examine the effectiveness of the "single window" capability. Under this test, OMC-required data will be transmitted electronically through ACE utilizing the PGA Message Set and DIS for any merchandise or combination thereof covered by any of these programs. For approved participants, the pilot test may include all modes of transport at the selected port(s). The import filing process for OMC will require the submission of specifically designated data/information. Both the designated PGA Message Set and DIS will be utilized to collect the specified information that is required by OMC in implementing Section 609. The PGA Message Set data will be submitted to the CBP ACE system through the use of ABI at the time of the filing in addition to the CBP required import Entry or Entry Summary data. Scanned copies of specific documents required will be submitted at the time of filing to the CBP DIS, either through uploading the file copies to the ABI system or by sending them to the DIS as email attachments. Examples of the kind of data that will be submitted as part of the PGA Message set are the name of the harvesting nation, the method of harvest, and the identity of the exporter, importer or ultimate consignee, and the net weight in kilograms. Examples of the types of scanned images that will be submitted to the DIS are DS–2031 forms requiring information about and the signature of a Responsible Government Official of the harvesting nation or economy. For information regarding products regulated by Section 609 and data, information, and DS–2031 form required by OMC, see the implementation guidelines for OMC at: *http://www.cbp.gov/sites/default/files/documents/OMC%20PGA%20Message%20Set%20Guidelines.pdf*.

V. Test Participation Criteria and Participation Procedure

Any party seeking to participate in this test must provide CBP, in their request to participate, their filer code and the port(s) at which they are interested in filing the appropriate PGA Message Set and DIS information. Requests to participate in this test will be accepted throughout the duration of the test without limitation as to number of participants. To be eligible for this pilot, the applicant must be a self-filing importer who has the ability to file ACE Entry Summaries certified for cargo release and ACE cargo release or a broker who has the ability to file ACE Entry Summaries certified for cargo release and ACE cargo release; and the applicant files entries for shrimp or shrimp products. All PGA Message Set participants are required to use a software program that has completed ACE certification testing for the PGA Message Set. The PGA Message Set data and DIS submissions are not limited by entry type except by the ACE Mandatory Use Dates which can be found at *https://www.cbp.gov/trade/automated/ace-mandatory-use-dates.*

VI. Anticipated Process Changes

The current paper process for the DS–2031 will eventually be replaced by the submittal of data and scanned document images through a combination of the PGA Message Set and DIS. This test covers communication and coordination among the agencies and those who file the DS–2031 for the importation of shrimp and shrimp products. The agencies will also be testing new operational processes in real time with actual ACE filings in the production environment that include test messages of errors in filing and release status updates to the port and to the filer. Entry data submissions will be subject to validation edits and any applicable PGA business rules programmed into ACE. Once entry data has cleared the initial stage of validation edits and PGA business rules, the filer will receive messages, automatically generated or manually initiated by, thus keeping the filer informed as to the status of the shipment from the time of entry data submission until the time of release. Once all of the PGAs have concluded their review of the shipment and have unset any remaining holds, CBP will send one U.S. government release message to the filer to indicate that the filer has fulfilled all U.S. government filing requirements for the shipment.

VII. Confidentiality

All data submitted and entered into ACE is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and the name(s) of an approved participant(s) may be disclosed by CBP.

Dated: June 9, 2016.

William Gibbons-Fly,

Director, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

[FR Doc. 2016–14184 Filed 6–14–16; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2016–0012]

Emergency Deletion of National Network Route—Kentucky Route 151

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: This notice requests comments on the emergency deletion of Kentucky Route 151 (KY 151) (from US 127 north of Lawrenceburg, KY to Interstate 64 (I–64) Exit 48) from the National Network (NN) based on safety considerations related to numerous truck accidents and route geometric deficiencies. On April 26, 2016, FHWA approved the emergency deletion of KY 151 (from U.S. 127 north of Lawrenceburg to I–64 Exit 48), from the NN based on safety considerations. The deletion is not final and FHWA seeks public comments and information to assist in assessing its impacts.

DATES: Comments must be received on or before July 15, 2016.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.
- *Instructions:* You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For questions about the deletion from the NN, contact Crystal Jones, FHWA Office of Freight Management and Operations, telephone at 202–366–2976, or via email at *Crystal.Jones@dot.gov.* For legal questions, please contact William Winne, FHWA Office of the Chief Counsel, telephone at 202–366–1397, or via email at *William.Winne@dot.gov.* Business hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve a copy of the notice through the Federal eRulemaking portal at *http://www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded from Office of the Federal Register's Web site at *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at *http://www.gpoaccess.gov.*

Background

The NN was authorized by the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97–424). Title 23 CFR 658 requires States to allow conventional large truck combinations on designated roadways that link principal cities and densely developed areas of the States. Conventional large truck combinations are tractors with one semitrailer of 48 feet in length or one 28-foot semitrailer and one 28-foot trailer, both of which can be up to 102 inches wide.

Even though the geography of interstate commerce has changed significantly with the growth of smaller communities into principle cities and the emergence of new densely developed areas, the NN has not changed significantly in a quarter century. The definition of conventional large truck combinations has also not changed, although 53-feet instead of 48-feet is the prevalent length of a single trailer and is allowed in most States.

The STAA acknowledged that the NN might need to be changed over time. Accordingly, FHWA developed regulations on the procedures for additions, deletions, and use restrictions. Title 23 CFR 658.11(e) provided for emergency deletions of any route from the NN for safety considerations. Emergency deletions are not considered final, and must be published in the **Federal Register** for notice and comment.

Conventional large truck combinations often use KY 151 as a shortcut from I–64 Exit 48 to connect with four-lane divided U.S. 127 north of Lawrenceburg, KY. A recent series of large truck crashes have raised concerns on the appropriateness of its designation as an NN route. The predominant type of crash involves trucks veering off the roadway where the roadway and shoulders are too narrow for conventional combination large trucks. The route has experienced an increasingly high rate of single vehicle truck accidents. It has marginal lane widths (11 to 12 foot) and shoulder widths (1 to 2 foot) and includes sections with horizontal curvature that negatively impact sight distances and safe operation of combination truck and bus vehicle traffic. The current traffic volume on the nearby alternate route (U.S. 127) is approximately 18,000 average annual daily traffic (AADT). Based on traffic data available, FHWA expects that truck traffic on U.S. 127 will increase from 1,260 to 1,694 AADT per day, that is, approximately 434 trucks per day. The percentage of trucks on U.S. 127 would increase from about 7 to 9 percent trucks.

Vehicle collision data gathered from the Kentucky State Police show that KY 151 experienced single vehicle accidents involving large trucks and buses six times more often than U.S. 127 (the alternate route), during the same time period. Further analysis shows that half of the accidents on KY 151 are "Ran Off Roadway (One Vehicle With/Earth Embankment/Ditch)" collisions, while U.S. 127 did not experience a single accident of this type during the same reporting period (2010–2015). The U.S. 127 is a four-lane divided partially controlled access highway with 12-foot lanes, 10-foot paved outside shoulders, 4-foot paved inside shoulders, and a 40-foot median.

Purpose of the Notice

The purpose of this notice is to request comments on the deletion of KY 151 (from U.S. 127 north of Lawrenceburg to I–64 Exit 48) from the NN. To ensure that the NN remains substantially intact, FHWA retains the authority to rule upon all requested additions to, and deletions from, the NN. This authority includes emergency deletions based on safety considerations (23 CFR 658.11(e)). On April 26, 2016, FHWA approved the emergency deletion of KY 151 from I–64 to U.S. 127 (near Lawrenceburg, KY) from the NN based on safety considerations. This deletion is not final and FHWA seeks public comments to assist in assessing its impacts.

Comments are requested on the following matters and any others relating to the deletion of the route from the NN:

- Will the deletion of the route negatively impact the flow of interstate commerce?
- Are there safety issues with the route, particularly as it relates to operation of conventional combination large trucks that are generally tractors with one semitrailer up to 48 feet in length, or one 28-foot semitrailer and one 28-foot trailer, and up to 102 inches wide?
- What is the safety record of the route, including current or anticipated safety problems?
- Is the route experiencing above normal accident rates and/or accident severities?
- Is there information available that indicates that the accident problems on the route are aggravated by larger conventional trucks?
- What are the geometric, structural, or traffic operations features that might preclude safe and efficient operation of large conventional trucks (*e.g.,* lane widths, sight distance, severity and length of grades, horizontal curvature, shoulder width, narrow bridges, bridge clearances and load limits, traffic volumes and vehicle mix, intersection geometrics, and vulnerability of roadside property)? (*Pictures or illustrations would be helpful.*)
- Are there operational restrictions that might be implemented in lieu of deletion of the route from the NN?
- Are there locations on the route that large trucks require access to such as terminals and facilities for food, fuel, repairs, and rest?
- Is U.S. 127 a reasonable alternate route?
- Are there safety concerns with the use of U.S. 127 as alternate route. (*Pictures or illustrations would be helpful.*)

Authority: 49 U.S.C. 31111–31114; Sections 411 and 412 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424).

Issued on: June 1, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–14129 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the re-use of historical U.S. 40 steel bridge truss members for construction of a bicycle and pedestrian bridge over Little Blue River in the City of Grandview in the State of Missouri.

DATES: The effective date of the waiver is June 16, 2016.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, 202–366–1562, or via email at *gerald.yakowenko@dot.gov.* For legal questions, please contact Ms. Jennifer Mayo, FHWA Office of the Chief Counsel, 202–366–1523, or via email at *jennifer.mayo@dot.gov.* Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at *http://www.archives.gov* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the re-use of historical U.S. 40 steel bridge truss members in construction of bicycle and pedestrian bridge over Little Blue River in Grandview, MO.

In accordance with Division K, section 122 of the Consolidated and Further Continuing Appropriations Act of 2015 (Pub. L. 113–235), FHWA published a notice of intent to issue a waiver on its Web site (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=120*) on March 22nd. The FHWA received no comments in response to the publication. The truss members were part of U.S. 40 Historic Bridge (Bridge #J0526) that was dismantled as a part of the I–70 project currently under construction. The steel trusses will be re-used in the construction of a pedestrian bridge over the Little Blue River in Grandview, MO as part of the Longview Lake Trail. Based on all the information available to the Agency, FHWA concludes that it is in the public interest to re-use the historical US 40 steel bridge truss members for construction of a bicycle and pedestrian bridge over Little Blue River in Grandview, MO.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244), FHWA is providing this notice that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410.

Issued on: June 1, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–14142 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–6156; FMCSA–2000–7918; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2007–0017; FMCSA–2007–26653; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2009–0303; FMCSA–2010–0082; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2011–0275; FMCSA–2011–0298; FMCSA–2011–0299; FMCSA–2011–26690; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 120 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: Each group of renewed exemptions are effective from the dates stated in the discussions below.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may submit comments using the following Federal Docket Management System (FDMS) Docket Nos. discussed in this notice using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

II. Background

On December 24, 2015, FMCSA published a notice of intent to renew the exemptions of drivers who have previously held exemptions, and requested comments from the public (80 FR 80443). The 120 individuals have held exemptions from the vision requirement in 49 CFR 391.41(b)(10) for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver. FMCSA encourages you to participate by submitting comments and related materials.

IV. Basis for Renewing Exemptions

This notice addresses 120 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 120 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of January and are discussed below.

As of January 3, 2016 the following 41 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (64 FR 54948; 65 FR 159; 66 FR 53826; 66 FR 66966; 66 FR 66969; 68 FR 69432; 68 FR 69434; 70 FR 53412; 70 FR 57353; 70 FR 72689; 70 FR 74102; 71 FR 32183; 71 FR 41310; 71 FR 644; 72 FR 180; 72 FR 8417; 72 FR 9397; 72 FR 36099; 72 FR 39879; 72 FR 52419; 72 FR 62897; 72 FR 71995; 73 FR 60398; 74 FR 8302; 74 FR 34394; 74 FR 37295; 74 FR 41971; 74 FR 48343; 74 FR 60021; 74 FR 65847; 75 FR 25917; 75 FR 39727; 76 FR 12216; 76 FR 34135; 76 FR 49528; 76 FR 53708; 76 FR 54530; 76 FR 55465; 76 FR 61143; 76 FR 64169; 76 FR 64171; 76 FR 67246; 76 FR 70210; 76 FR 70212; 76 FR 75942; 76 FR 75943; 76 FR 79760; 78 FR 24798; 78 FR 34143; 78 FR 41975; 78 FR 46407; 78 FR 47818; 78 FR 52602; 78 FR 56986; 78 FR 62935; 78 FR 63302; 78 FR 63307; 78 FR 64274; 78 FR 65032; 78 FR 66099; 78 FR 67452; 78 FR 67460; 78 FR 76395; 78 FR 76705; 78 FR 77778; 78 FR 77780; 78 FR 77782; 78 FR 78477; 80 FR 80443):

Terry L. Baker (KY)
Woodrow E. Bohley (MO)
Jason W. Bowers (OR)
Scott Brady (FL)
Kenneth E. Bross (MO)
Junior Chavarria (NM)
William Chisley (MD)
Walter F. Crean, III (CT)
Terry D. Elliott (TN)
Ronnie J. Fieck (WI)
Frederick E. Foster (VA)
Gerald W. Fox (PA)
Raymond L. Herman (NY)
Wesley V. Holland (NC)
Darryl H. Johnson (WV)
Carol Kelly (IN)
Martin D. Keough (NY)
Richard H. Kind (WA)
Eric L. Kinner (NY)
Volga Kirkwood (MO)
Richard L. Loeffelholz (WI)
Stanley B. Marshall (GA)
Herman C. Mash (NC)
James McCleary (OH)
Humberto Mendoza (TX)
Marvin L. Motes (FL)
Gerald L. Pagan (NC)
Daniel F. Perez (CA)
Robert G. Rascicot (FL)
Michael J. Robinson (WV)
Glen M. Schulz (IA)
Levi A. Shetler (OH)
Herbert W. Smith (WV)
Juan E. Sotero (FL)
James A. Spell (MD)
Timothy R. Steckman (IL)
Paul D. Stoddard (NY)
Harry J. Stoever, Jr. (NJ)
Eric Taniguchi (HI)
Benny R. Toothman (PA)
Stephen H. Ward (MO)

The drivers were included in one of the following dockets: Docket Nos. FMCSA–1999–6156; FMCSA–2001–10578; FMCSA–2005–22194; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2007–26653; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2010–0082; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2011–26690; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169. Their exemptions are effective as of January 3, 2016 and will expire on January 3, 2018.

As of January 5, 2016, the following 3 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (76 FR 70213; 77 FR 541; 78 FR 74223; 80 FR 80443):

Michael P. Eisenreich (MN)
John T. Thor (MN)
George G. Ulferts, Jr. (IA)

The drivers were included in one of the following dockets: Docket No. FMCSA–2011–0298. Their exemptions are effective as of January 5, 2016 and will expire on January 5, 2018.

As of January 8, 2016, the following 10 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (72 FR 67340; 73 FR 1395; 74 FR 65845; 76 FR 78728; 78 FR 76704; 80 FR 80443):

Richard D. Becotte (NH)
Wayne A. Burnett (NC)
Boleslaw Makowski (WI)
Charles M. Moore (TX)
Gary T. Murray (GA)
Anthony D. Ovitt (VT)
Martin Postma (IL)
Steven S. Reinsvold (WI)
George E. Todd (WV)
Bradley A. Weiser (OH)

The drivers were included in one of the following dockets: Docket No. FMCSA–2007–0017. Their exemptions are effective as of January 8, 2016 and will expire on January 8, 2018.

As of January 9, 2016, the following individual, Juan R. Andrade (TX), has satisfied the conditions for obtaining a renewed exemption from the vision requirements (78 FR 64271; 79 FR 2748; 80 FR 80443). The driver was included in the following docket: Docket No. FMCSA–2013–0167. The exemption is effective as of January 9, 2016 and will expire on January 9, 2018.

As of January 15, 2016, the following 15 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (78 FR 64271; 79 FR 2748; 80 FR 80443):

Ronald C. Ashley (GA)
Miguel A. Calderon (CA)
Terry L. Cliffe (IL)
Andrew S. Durward (IL)
James P. Fitzgerald (MA)
Louis E. Henry, Jr. (KY)
Adam S. Larson (CO)
Sally A. Leavitt (NV)
Glenn H. Lewis (OH)
Leonardo Lopez (NE)
Larry P. Magrath (MN)
Richard J. Pauxtis (OR)
Johnny L. Powell (MD)
Roy A. Whitaker (TX)
Sammy D. Wynn (GA)

The drivers were included in one of the following dockets: Docket No. FMCSA–2013–0167. Their exemptions are effective as of January 15, 2016 and will expire on January 15, 2018.

As of January 24, 2016, the following 7 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (76 FR 64164; 76 FR 70213; 76 FR 73769; 77 FR 541; 77 FR 3547; 79 FR 2247; 80 FR 80443):

Adam O. Carson (MS)
Marion J. Coleman, Jr. (KY)
Lex A. Fabrizio (UT)
Mark A. Ferris (IA)
Roger W. Hammack (AL)
Herman Martinez (NM)
Gilford J. Whittle (GA)

The drivers were included in one of the following dockets: Docket No. FMCSA–2011–0275; FMCSA–2011–0298; FMCSA–2011–0299. Their exemptions are effective as of January 24, 2016 and will expire on January 24, 2018.

As of January 27, 2016, the following 13 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (65 FR 66286; 66 FR 13825; 68 FR 10300; 68 FR 37197; 68 FR 52811; 68 FR 61860; 70 FR 41811; 70 FR 48797; 70 FR 48798; 70 FR 48799; 70 FR 48800; 70 FR 48801; 70 FR 57353; 70 FR 61165; 70 FR 71884; 70 FR 72689; 71 FR 4632; 72 FR 52422; 72 FR 58359; 72 FR 62897; 73 FR 1395; 73 FR 5259; 74 FR 60021; 74 FR 64124; 74 FR 65845; 75 FR 1451; 77 FR 545; 78 FR 78475; 80 FR 80443):

Arthur L. Bousema (CA)
Norman E. Braden (CO)
Matthew W. Daggs (MO)
Donald R. Date, Jr. (MD)
Gordon R. Fritz (WI)
Ronald K. Fultz (KY)
John E. Kimmet, Jr. (WA)
Robert C. Leathers (MO)
Jason L. Light (ID)
Kenneth R. Murphy (WA)
Michael J. Richard (LA)
Robert E. Sanders (PA)
Robert A. Sherry (PA)

The drivers were included in one of the following dockets: Docket No. FMCSA–2000–7918; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727. Their exemptions are effective as of January 27, 2016 and will expire on January 27, 2018.

As of January 28, 2016, the following 9 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (74 FR 60022; 75 FR 4623; 77 FR 543; 78 FR 76707; 80 FR 80443):

James J. Coffield (NM)
Roy E. Crayne (WA)
James A. Dubay (MI)
Donald E. Halvorson (NM)
Roger D. Kool (IA)
Phillip J.C. Locke (CO)
Brian T. Nelson (MN)
Christopher M. Rivera (NM)
Robert E. Whitney (IL)

The drivers were included in one of the following dockets: Docket No. FMCSA–2009–0303. Their exemptions are effective as of January 28, 2016 and will expire on January 28, 2018.

As of January 29, 2016, the following 21 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (78 FR 67454; 79 FR 4803; 80 FR 80443):

Calvin J. Barbour (NY)
Martin D. Bellcour (WI)
Walter A. Breeze (OH)
Donald G. Carstensen (IA)
Jamie D. Daniels (IA)
Mark A. Farnsley (IN)
Michael L. Fiamingo (PA)
Kenric J. Fields (DE)
Randall Hjelmtveit (MN)
Randy G. Kinney (IL)
Hector Marquez (TX)
Dennis R. Martinez (NM)
Fred A. Miller, Jr. (CA)
Joseph K. Parley (WI)
Robert L. Pearson (GA)
Ryan R. Ross (SC)
Troy M. Ruhlman (PA)
Hershel D. Volentine (LA)
Gary D. Vollertsen (CO)
David R. Webb, Jr. (IL)
Wesley A. Willis (NJ)

The drivers were included in one of the following dockets: Docket No. FMCSA–2013–0170. Their exemptions are effective as of January 29, 2016 and will expire on January 29, 2018.

Each of these 120 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 120 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 7, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–14141 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0350]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 30 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted April 16, 2016. The exemptions expire on April 16, 2018.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t. Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t. Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On March 16, 2016, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (81 FR 14190). That notice listed 30 applicants' case histories. The 30 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 30 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

> A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 30 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, anisometropic amblyopia, central retinal scar, choroidal melanoma, complete loss of vision, corneal scarring, macular scar, prosthetic eye, psuedophakia, ptisis bulbi, refractive amblyopia, retinal detachment, temporal hemianopia, and traumatic glaucoma. In most cases, their eye conditions were not recently developed. Twenty-one of the applicants were either born with their vision impairments or have had them since childhood.

The 9 individuals that sustained their vision conditions as adults have had it for a range of 4 to 46 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 30 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging for 4 to 53 years. In the past three years, no drivers were involved in crashes, and 2 drivers were convicted of moving violations in CMVs.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the March 16, 2016 notice (81 FR 14190).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 30 applicants, no drivers were involved in crashes, and 2 drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 30 applicants listed in the notice of March 16, 2016 (81 FR 14190.

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 30 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following:

(1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the 30 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Gary L. Bartels (TX)
Christopher Benavidez (NM)
William H. Brence (SD)
Dean B. Carrick (MI)
Jaime V. Cavazos (TX)
Jacob Dehoyos (NM)
Larry D. Fulk (MO)
Hugo A. Galvis Barrera (GA)
Harold J. Gilbert (CO)
Darrell K. Harber (MO)
Clair G. High (PA)
Robert E. Holbrook (TN)
Lowell E. Jackson (MO)
Maurice L. Kinney (NY)
Richard R. Krafczynski, Jr. (PA)
Michael S. McHale (PA)
Darin P. Milton (TN)
Myron Morehouse (MN)
Dakota J. Papsun (PA)
Raffaelo Petrillo (NJ)
William J. Powell (KY)
Cory R. Rand (NH)
Bobby W. Sanders (TN)
Logan D. Shaffer (SC)
Laurence W. Sellers (AL)
Johnny T. Solorio (CA)
Richard R. Vonderohe (IA)
William J. Watts (MT)
Russell Zelich (PA)
Frederick A. Zoeller, Jr. (NH)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 6, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–14140 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Approval of Product Safety Plan

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated May 12, 2016, CSX Transportation (CSX) has petitioned the Federal Railroad Administration (FRA) for approval of its Product Safety Plan (PSP) for its ElectroBlox Wayside Interface Unit (WIU). FRA assigned the petition Docket Number FRA–2010–0028.

The PSP submitted is intended to meet the requirements prescribed in 49 CFR part 236, subpart H–Standards for Processor-Based Signal and Train Control Systems, in 49 CFR 236.907 and 49 CFR 236.913. As such, CSX maintains that the ElectroBlox system was designed in a safe manner, reliably executes the functions of an interoperable Positive Train Control (PTC) wayside component, and does not result in risk that exceeds the previous condition.

The ElectroBlox system is used to translate discrete vital inputs into wayside status messages that comply with the Interoperable Train Control

(ITC) WIU specification. This system targets applications where existing microprocessor-based equipment does not exist or are in lieu of integrated WIU PTC upgrades to existing electronic signal controllers.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 1, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–14121 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0058]

Canadian Pacific Railway's Request for Positive Train Control Safety Plan Approval and System Certification

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that Canadian Pacific Railway (CP) submitted to FRA its Positive Train Control Safety Plan (PTCSP) Version 1.0, dated May 9, 2016, on FRA's Secure Information Repository (SIR) site on May 11, 2016. CP asks FRA to approve its PTCSP and issue a Positive Train Control System Certification for CP's Interoperable Electronic Train Management System (I–ETMS), under 49 CFR part 236.

DATES: FRA will consider communications received by July 15, 2016 before taking final action on the PTCSP. FRA may consider comments received after that date if practicable.

ADDRESSES: All communications concerning this proceeding should identify Docket Number 2010–0058 and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Hartong, Senior Scientific Technical Advisor, at (202) 493–1332, or *Mark.Hartong@dot.gov;* or Mr. David Blackmore, Staff Director, Positive Train Control Division, at (312) 835–3903, or *David.Blackmore@dot.gov.*

SUPPLEMENTARY INFORMATION: In its PTCSP, CP asserts that it designed its I–ETMS as a vital overlay PTC system as defined in 49 CFR 236.1015(e)(2). The PTCSP describes CP's I–ETMS implementation and the associated I–ETMS safety processes, safety analyses, and test, validation, and verification processes used during the development of I–ETMS. The PTCSP also contains CP's operational and support requirements and procedures.

CP's PTCSP and the accompanying request for approval and system certification are available for review online at *www.regulations.gov* (Docket Number FRA–2010–0058) and in person at DOT's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to comment on the PTCSP by submitting written comments or data. During its review of the PTCSP, FRA will consider any comments or data submitted. However, FRA may elect not to respond to any particular comment and, under 49 CFR 236.1009(d)(3), FRA maintains the authority to approve or disapprove the PTCSP at its sole discretion. FRA does not anticipate scheduling a public hearing regarding CP's PTCSP because the circumstances do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, the party should notify FRA in writing before the end of the comment period and specify the basis for his or her request.

Privacy Act Notice

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which you can review at *www.dot.gov/privacy.* See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–14123 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0034]

Port Authority Trans-Hudson Corporation's Request for Positive Train Control Safety Plan Approval and System Certification

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that the Port Authority Trans-Hudson Corporation (PATH) submitted to FRA its Positive Train Control Safety Plan (PTCSP), Revision 3.0, dated March 23, 2016. PATH asks FRA to approve its PTCSP and issue a Positive Train Control (PTC) System Certification for PATH's Communication Based Train Control (CBTC) system, under Title 49 Code of Federal Regulations (CFR) 236.1009, *Procedural requirements,* and 236.1015, *PTC Safety Plan content requirements and PTC System Certification.* This notice was assigned to Docket Number FRA–2010–0034.

DATES: FRA will consider communications received by July 15, 2016 before taking final action on the PTCSP. FRA may consider comments received after that date if practicable.

ADDRESSES: All communications concerning this proceeding should refer to Docket Number FRA–2010–0034 and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Hartong, Senior Scientific and Technical Advisor at (202) 493–1332, or *Mark.Hartong@dot.gov;* or Mr. David Blackmore, Railroad Safety Program Manager for Applied Technology at (312) 835–3903, or *David.Blackmore@dot.gov.*

SUPPLEMENTARY INFORMATION: In its revised Positive Train Control Implementation Plan, referenced in its PTCSP, PATH asserts its CBTC system is a vital standalone PTC system as defined in 49 CFR 236.1015(e). The PTCSP describes PATH's CBTC implementation and the associated CBTC safety processes, safety analyses, and test, validation, and verification processes used during development of CBTC. The PTCSP also contains PATH's operational and support requirements and procedures.

PATH's PTCSP and the accompanying request for approval and system certification are available for review online at *www.regulations.gov* (Docket Number FRA–2010–0034) and in person at DOT's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to comment on the PTCSP by submitting written comments or data. During its review of the PTCSP, FRA will consider any comments or data submitted. However, FRA may elect to not respond to any particular comment and, under 49 CFR 236.1009(d)(3), FRA maintains the authority to approve or disapprove the PTCSP at its sole discretion. FRA does not anticipate scheduling a public hearing regarding PATH's PTCSP because the circumstances do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, the party should notify FRA in writing before the end of the comment period and specify the basis for his or her request.

Privacy Act Notice

Anyone may search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 49 CFR 211.3, *Participation by interested persons,* FRA solicits comments from the public to better inform its decisions. DOT posts these comments without edit, including any personal information the commenter provides, to *www.regulations.gov* as described in the system of records notice (DOT/ALL–14 FDMS), which you can review at *www.dot.gov/privacy.* See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–14122 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Lending Limits

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, "Lending Limits." The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted by July 15, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0221, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0221, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is publishing notice of the renewal of the collection of information set forth in this document.

Title: Lending Limits.

OMB Control No.: 1557–0221 (12 CFR 32.7) (Merging in 1557–0317 (12 CFR 32.7)).

Affected Public: Businesses or other for-profit.

Type of Review: Extension of a currently approved collection.

Abstract: 12 CFR 32.7(a) provides that, in addition to the amount that a national bank or savings association may lend to one borrower under 12 CFR 32.3, an eligible national bank or savings association may make residential real estate loans, small business loans, small farm loans or extensions of credit thereof to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank or savings association is permitted to lend under the State lending limit that is available for residential real estate loans or unsecured loans in the state where the main office of the national bank or savings association is located.[1]

An eligible national bank or savings association must submit an application to, and receive approval from, its supervisory office before using the supplemental lending limits in § 32.7(a). The supervisory office may approve a completed application if it finds that approval is consistent with safety and soundness. Section 32.7(b) provides that the application must include:

(1) Certification that the national bank or savings association is an eligible national bank or eligible savings association;

(2) Citations to relevant State laws or regulations;

(3) A copy of a written resolution by a majority of the national bank's or savings association's board of directors approving the use of the limits, and confirming the terms and conditions for use of this lending authority; and

(4) A description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.

12 CFR 32.9(b) provides national banks and savings associations with three alternative methods for calculating the credit exposure of derivative transactions other than credit derivatives (the Internal Model Method, the Conversion Factor Matrix Method, and the Remaining Maturity Method) and two alternative methods for calculating such exposure for securities financing transactions. The OCC provided these models to reduce the practical burden of such calculations, particularly for small and mid-size banks and savings associations.

Under 12 CFR 32.9(b)(1)(i)(C)(1), the use of a model (other than the model approved for purposes of the Advanced Measurement Approach in the capital rules) must be approved by the OCC specifically for part 32 purposes and must be approved in writing. If a national bank or Federal savings association proposes to use an internal model that has been approved by the OCC for purposes of the Advanced Measurement Approach, the institution must provide prior written notification to the OCC prior to use of the model for lending limits purposes. OCC approval also is required before substantive revisions are made to a model that is used for lending limits purposes.

Estimated Number of Respondents: 295.

Estimated Annual Burden: 1,958 hours.

On April 4, 2016, the OCC published a notice for 60 days of comment concerning the collection, 81 FR 19288. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 10, 2016.

Mary Hoyle Gottlieb,

Regulatory Specialist, Legislative and Regulatory Activities Division.

[FR Doc. 2016–14162 Filed 6–14–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning information collect requirements related to the treatment of distributions to foreign persons under sections 367(e)(1) and 367(e)(2).

DATES: Written comments should be received on or before August 15, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2).

OMB Number: 1545–1487.

Regulation Project Number: REG–209827–96 and REG–111672–99.

Abstract: Section 367(e)(1) provides that, to the extent provided in regulations, a domestic corporation must recognize gain on a section 355 distribution of stock or securities to a foreign person. Section 367(e)(2) provides that section 337(a) and (b)(1) does not apply to a section 332 distribution by a domestic corporation to a foreign parent corporation that owns 80 percent of the domestic liquidating corporation (as described in section 337(c)). Section 6038B(a) requires a U.S. person who transfers property to a foreign corporation in an exchange described in sections 332 or 355, among other sections, to furnish to the Secretary of the Treasury certain information with respect to the transfer, as provided in regulations.

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[1] An *eligible national bank or eligible savings association* is well capitalized as defined in the prompt corrective action rules applicable to the institution and has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with its most recent examination or subsequent review, with at least a rating of 2 for asset quality and for management.

The final regulations under section 367(e)(1) require gain recognition only for distributions of the stock or securities of foreign corporations to foreign persons. The final regulations under section 367(e)(2) generally require gain recognition when a domestic corporation liquidates into its foreign parent corporation; the regulations generally do not require gain recognition when a foreign corporation liquidates into its foreign parent corporation.

This document (TD 9704) contains final and temporary regulations relating to the consequences to U.S. and foreign persons for failing to satisfy reporting obligations associated with certain transfers of property to foreign corporations in nonrecognition exchanges. This document permits transferors to remedy "not willful" failures to file, and "not willful" failures to comply with the terms of, liquidation documents required under section 367(e)(2). In addition, this document modifies the reporting obligations under section 6038B associated with transfers that are subject to section 367(e)(2). Further, this document provides similar rules for certain transfers that are subject to section 367(a). The regulations are necessary to update the rules that apply when a U.S. or foreign person fails to file required documents or statements or satisfy reporting obligations. The regulations affect U.S. and foreign persons that transfer property to foreign corporations in certain non-recognition exchanges.

Current Actions: There is no change to this existing regulation.

Type of Review: Reinstatement of a previously approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 414.

Estimated Time per Respondent: 5 hours, 58 minutes.

Estimated Total Annual Burden Hours: 2,471.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 7, 2016.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2016–14109 Filed 6–14–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Availability of a Draft Environmental Impact Statement for the Reconfiguration of VA Black Hills Health Care System; Comment Period Extension

AGENCY: Department of Veterans Affairs.

ACTION: Notice of availability; Comment period extension.

SUMMARY: The Department of Veterans Affairs (VA) published, in the **Federal Register** on October 30, 2015, the Notice of Availability of a Draft Environmental Impact Statement (EIS) for the Reconfiguration of VA Black Hills Health Care System (BHHCS) that analyzes the potential impacts of six alternatives for changes to VA's facilities in Hot Springs and Rapid City, South Dakota. In order to successfully complete historic property consultation relating to this proposed action, VA is extending the closing date for the comment period for the Draft EIS from May 5, 2016 to June 20, 2016.

DATES: All comments must be submitted by June 20, 2016.

ADDRESSES: Submit written comments on the VA BHHCS Reconfiguration Draft EIS online through *www.blackhillseis.com,* by email to *vablackhillsfuture@va.gov,* or by regular mail to Staff Assistant to the Director, VA Black Hills Health Care System, 113 Comanche Road, Fort Meade, SD 57741. Please refer to "BHHCS Reconfiguration Draft EIS" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Staff Assistant to the Director, VA Black Hills Health Care System, at the address above or by email to *vablackhillsfuture@va.gov.*

Dated: June 9, 2016.

Janet J. Coleman,

Regulation Policy and Management Specialist, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2016–14049 Filed 6–14–16; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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FEDERAL REGISTER

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Part II

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60–20
Discrimination on the Basis of Sex; Final Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–20

RIN 1250–AA05

Discrimination on the Basis of Sex

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: The U.S. Department of Labor's Office of Federal Contract Compliance Programs publishes this final rule to detail obligations that covered Federal Government contractors and subcontractors and federally assisted construction contractors and subcontractors must meet under Executive Order 11246, as amended, to ensure nondiscrimination in employment on the basis of sex and to take affirmative action to ensure that applicants and employees are treated without regard to their sex. This rule substantially revises the existing Sex Discrimination Guidelines, which have not been substantively updated since 1970, to align them with current law and legal principles and address their application to contemporary workplace practices and issues. The provisions in this final rule articulate well-established case law and/or applicable requirements from other Federal agencies and therefore the requirements for affected entities are largely unchanged by this rule.

DATES: *Effective Date:* These regulations are effective August 15, 2016.

FOR FURTHER INFORMATION CONTACT: Debra A. Carr, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW., Room C–3325, Washington, DC 20210. Telephone: (202) 693–0104 (voice) or (202) 693–1337 (TTY). Copies of this rule in alternative formats may be obtained by calling (202) 693–0104 (voice) or (202) 693–1337 (TTY). The rule also is available on the *Regulations.gov* Web site at *http://www.regulations.gov* and on the OFCCP Web site at *http://www.dol.gov/ofccp.*

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

The U.S. Department of Labor's (DOL) Office of Federal Contract Compliance Programs (OFCCP) is promulgating regulations that set forth the obligations that covered[1] Federal Government contractors and subcontractors and federally assisted construction contractors and subcontractors (contractors) must meet under Executive Order 11246, as amended[2] (the Executive Order or E.O. 11246). These regulations detail the obligation of contractors to ensure nondiscrimination in employment on the basis of sex and to take affirmative action to ensure that they treat applicants and employees without regard to their sex.

OFCCP is charged with enforcing E.O. 11246, which prohibits employment discrimination by contractors on the basis of race, color, religion, sex, sexual orientation, gender identity,[3] or national origin, and requires them to take affirmative action to ensure that applicants and employees are treated without regard to these protected bases. E.O. 11246 also prohibits contractors from discharging or otherwise discriminating against employees or applicants because they inquire about, discuss, or disclose their compensation or the compensation of other applicants or employees.[4] OFCCP interprets the nondiscrimination provisions of the Executive Order consistent with the principles of title VII of the Civil Rights Act of 1964 (title VII),[5] which is enforced, in large part, by the Equal Employment Opportunity Commission (EEOC), the agency responsible for coordinating the Federal Government's enforcement of all Federal statutes, executive orders, regulations, and policies requiring equal employment opportunity.[6]

OFCCP's Sex Discrimination Guidelines at 41 CFR part 60–20 (Guidelines) have not been substantively updated since they were first promulgated in 1970.[7] The Guidelines failed to conform to or reflect current title VII jurisprudence or to address the needs and realities of the modern workplace. Since 1970, there have been historic changes to sex discrimination law, in both Federal statutes and case law, and to contractor policies and practices as a result of the nature and extent of women's participation in the labor force. Issuing these new regulations should resolve ambiguities, thus reducing or eliminating any costs that such contractors previously may have incurred to reconcile conflicting obligations.

It is long overdue for part 60–20 to be updated. Consequently, OFCCP issued a Notice of Proposed Rulemaking (NPRM) on January 30, 2015 (80 FR 5246), to revise this part to align the sex discrimination standards under E.O. 11246 with developments and interpretations of existing title VII principles and to clarify OFCCP's corresponding interpretation of the Executive Order. This final rule adopts many of those proposed changes, with modifications, and adds some new provisions in response to issues implicated in, and comments received on, the NPRM.

Statement of Legal Authority

Issued in 1965, and amended several times during the intervening years—including once in 1967, to add sex as a prohibited basis of discrimination, and most recently in 2014, to add sexual orientation and gender identity to the list of protected bases—E.O. 11246 has two purposes. First, it prohibits covered contractors from discriminating against employees and applicants because of race, color, religion, sex, sexual orientation, gender identity, or national origin; it also prohibits discrimination against employees or applicants because they inquire about, discuss, or disclose their compensation or the compensation of other employees or applicants. Second, it requires covered contractors to take affirmative action to ensure that applicants are considered, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. The nondiscrimination and affirmative action obligations of contractors cover a broad range of employment actions.

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[1] Employers with Federal contracts or subcontracts totaling $10,000 or more over a 12-month period, unless otherwise exempt, are covered by the Executive Order. *See* 41 CFR 60–1.5(a)(1). Exemptions to this general coverage are detailed at 41 CFR 60–1.5.

[2] E.O. 11246, September 24, 1965, 30 FR 12319, 12935, 3 CFR, 1964–1965, as amended.

[3] Executive Order 13672, issued on July 21, 2014, added sexual orientation and gender identity to E.O. 11246 as prohibited bases of discrimination. It applies to covered contracts entered into or modified on or after April 8, 2015, the effective date of the implementing regulations promulgated thereunder.

[4] Executive Order 13665, issued on April 8, 2014, added this prohibition to E.O. 11246. It applies to covered contracts entered into or modified on or after January 11, 2016, the effective date of the implementing regulations promulgated thereunder.

[5] Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–2000e–17; U.S. Department of Labor, Office of Federal Contract Compliance Programs, Federal Contract Compliance Manual, ch. 2, § 2H01, *available at http://www.dol.gov/ofccp/regs/compliance/fccm/FCCM_FINAL_508c.pdf* (last accessed March 25, 2016) *(FCCM); see also OFCCP* v. *Greenwood Mills, Inc.,* No. 00–044, 2002 WL 31932547, at *4 (Admin. Rev. Bd. December 20, 2002).

[6] Executive Order 12067, 43 FR 28967, 3 CFR 206 (1978 Comp.). The U.S. Department of Justice also enforces portions of title VII, as do state Fair Employment Practice Agencies (FEPAs).

[7] 35 FR 8888, June 9, 1970. The Guidelines were reissued in 1978. 43 FR 49258, October 20, 1978. The 1978 version substituted or added references to E.O. 11246 for references to E.O. 11375 in paragraphs 60–20.1 and 60–20.5(c), but otherwise did not change the 1970 version.

The Executive Order generally applies to any business or organization that (1) holds a single Federal contract, subcontract, or federally assisted construction contract in excess of $10,000; (2) has Federal contracts or subcontracts that, combined, total in excess of $10,000 in any 12-month period; or (3) holds Government bills of lading, serves as a depository of Federal funds, or is an issuing and paying agency for U.S. savings bonds and notes in any amount.

The requirements of the Executive Order promote the goals of economy and efficiency in Government contracting, and the link between them is well established. *See, e.g.,* E.O. 10925, 26 FR 1977 (March 8, 1961) (nondiscrimination and affirmative employment programs ensure "the most efficient and effective utilization of all available manpower"). The sex discrimination regulations adopted herein outline the sex-based discriminatory practices that contractors must identify and eliminate, and they clarify how contractors must choose applicants for employment, and treat them while employed, without regard to sex. *See, e.g.,* § 60–20.2 (clarifying that sex discrimination includes discrimination on the bases of pregnancy, childbirth, related medical conditions, gender identity, transgender status,[8] and sex stereotyping, and that disparate treatment and disparate impact analyses apply to sex discrimination); § 60–20.3 (clarifying application of the *bona fide* occupational qualification (BFOQ) defense to the rule against sex discrimination); § 60–20.4, § 60–20.5, § 60–20.6, and § 60–20.8 (clarifying that discrimination in compensation; discrimination based on pregnancy, childbirth, or related medical conditions; discrimination in other fringe benefits; and sexual harassment, respectively, can be unlawful sex-discriminatory practices); and § 60–20.7 (clarifying that contractors must not make employment decisions based on sex stereotypes).

Each of these requirements ultimately reduces the Government's costs and increases the efficiency of its operations by ensuring that all employees and applicants, including women, are fairly considered and that, in its procurement, the Government has access to, and ultimately benefits from, the best qualified and most efficient employees. *Cf. Contractors Ass'n of E. Pa.* v. *Sec'y of Labor,* 442 F.2d 159, 170 (3d Cir. 1971) ("[I]t is in the interest of the United States in all procurement to see that its suppliers are not over the long run increasing its costs and delaying its programs by excluding from the labor pool available minority [workers]."). Also increasing efficiency by creating a uniform Federal approach to sex discrimination law, the regulations' requirements to eliminate discrimination and to choose applicants without regard to sex are consistent with the purpose of title VII to eliminate discrimination in employment.

Pursuant to E.O. 11246, the award of a Federal contract comes with a number of responsibilities. Section 202 of this Executive Order requires every covered contractor to comply with all provisions of the Executive Order and the rules, regulations, and relevant orders of the Secretary of Labor. A contractor in violation of E.O. 11246 may be liable for make-whole and injunctive relief and subject to suspension, cancellation, termination, and debarment of its contract(s) after the opportunity for a hearing.[9]

Major Revisions

OFCCP replaces in significant part the Guidelines at part 60–20 with new sex discrimination regulations that set forth Federal contractors' obligations under E.O. 11246, in accordance with existing law and policy. The final rule clarifies OFCCP's interpretation of the Executive Order as it relates to sex discrimination, consistent with title VII case law and interpretations of title VII by the EEOC. It is intended to state clearly contractor obligations to ensure equal employment opportunity on the basis of sex.

The final rule removes outdated provisions in the current Guidelines. It also adds, restates, reorganizes, and clarifies other provisions to incorporate legal developments that have arisen since 1970 and to address contemporary problems with implementation.

The final rule does not in any way alter a contractor's obligations under any other OFCCP regulations. In particular, a contractor's obligations to ensure equal employment opportunity and to take affirmative action, as set forth in parts 60–1, 60–2, 60–3, and 60–4 of this title, remain in effect. Similarly, inclusion of a provision in part 60–20 does not in any way alter a contractor's obligations to ensure nondiscrimination on the bases of race, color, religion, sexual orientation, gender identity, and national origin under the Executive Order; on the basis of disability under Section 503 of the Rehabilitation Act of 1973 (Section 503);[10] or on the basis of protected veteran status under 38 U.S.C. 4212 of the Vietnam Era Veterans' Readjustment Assistance Act.[11] Finally, it does not affect a contractor's duty to comply with the prohibition of discrimination because an employee or applicant inquires about, discusses, or discloses his or her compensation or the compensation of other applicants or employees under part 60–1.

The final rule is organized into eight sections and an Appendix.

The first section (§ 60–20.1) covers the rule's purpose.

The second section (§ 60–20.2) sets forth the general prohibition of sex discrimination, including discrimination on the bases of pregnancy, childbirth, related medical conditions, gender identity, transgender status, and sex stereotypes. It also describes employment practices that may unlawfully treat men and women disparately. Finally, the second section describes employment practices that are unlawful if they have a disparate impact on the basis of sex and are not job-related and consistent with business necessity.

The third section (§ 60–20.3) covers circumstances in which disparate treatment on the basis of sex may be lawful—*i.e.,* those rare instances when being a particular sex is a *bona fide* occupational qualification reasonably necessary to the normal operation of the contractor's particular business or enterprise.

The fourth section (§ 60–20.4) covers sex-based discrimination in compensation and provides illustrative examples of unlawful conduct. As provided in paragraph 60–20.4(e) of the final rule, compensation discrimination violates E.O. 11246 and this regulation "any time [contractors] pay[ ] wages, benefits, or other compensation that is the result in whole or in part of the application of any discriminatory compensation decision or other practice."

The fifth section (§ 60–20.5), discrimination on the basis of pregnancy, childbirth, and related medical conditions, recites the provisions of the Pregnancy

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[8] A transgender individual is an individual whose gender identity is different from the sex assigned to that person at birth. Throughout this final rule, the term "transgender status" does not exclude gender identity, and the term "gender identity" does not exclude transgender status.

[9] E.O. 11246, sec. 209(5); 41 CFR 60–1.27.

[10] 29 U.S.C. 793.

[11] 38 U.S.C. 4212.

Discrimination Act of 1978 (PDA); [12] lists examples of "related medical conditions;" and provides four examples of discriminatory practices. This section also discusses application of these principles to the provision of workplace accommodations and leave.

The sixth section (§ 60–20.6) sets out the general principle that sex discrimination in the provision of fringe benefits is unlawful, with pertinent examples, and clarifies that the increased cost of providing a fringe benefit to members of one sex is not a defense to a contractor's failure to provide benefits equally to members of both sexes.

The seventh section (§ 60–20.7) covers employment decisions on the basis of sex stereotypes and discusses four types of gender norms that may form the basis of a sex discrimination claim under the Executive Order: Dress, appearance, and/or behavior; gender identity; jobs, sectors, or industries within which it is considered appropriate for women or men to work; and caregiving roles.

The eighth section (§ 60–20.8), concerning sexual harassment, including hostile work environments based on sex, articulates the legal standard for sexual harassment based on the EEOC's guidelines and relevant case law and explains that sexual harassment includes harassment based on gender identity; harassment based on pregnancy, childbirth, or related medical conditions; and harassment that is not sexual in nature but that is because of sex or sex-based stereotypes.

Finally, the final rule contains an Appendix that sets forth, for contractors' consideration, a number of practices that contribute to the establishment and maintenance of workplaces that are free of unlawful sex discrimination. These practices are not required.

Benefits of the Final Rule

The final rule will benefit both contractors and their employees in several ways. First, by updating, consolidating, and clearly and accurately stating the existing principles of applicable law, including developing case law and interpretations of existing law by the EEOC and OFCCP's corresponding interpretation of the Executive Order, the final rule will facilitate contractor understanding and compliance and potentially reduce contractor costs. The existing Guidelines are extremely outdated and fail to provide accurate or sufficient guidance to contractors regarding their nondiscrimination obligations. For this reason, OFCCP no longer enforces part 60–20 to the extent that it departs from existing law. Thus, the final rule should resolve ambiguities, reducing or eliminating costs that some contractors may previously have incurred when attempting to comply with part 60–20.

The final rule will also benefit employees of and job applicants to contractors. This final rule will increase and enhance the promise of equal employment opportunity envisioned under E.O. 11246 for the millions of women and men who work for contractor establishments. Sixty-five million employees work for the contractors and other recipients of Federal monies that are included in the U.S. General Service Administration's (GSA) System for Award Management (SAM) database.[13]

More specifically, the final rule will advance the employment status of the more than 30 million female employees of contractors in several ways.[14] For example, it addresses both *quid pro quo* and hostile work environment sexual harassment. It clarifies that adverse treatment of an employee resulting from gender-stereotypical assumptions about family caretaking responsibilities is discrimination. It also confirms the requirement that contractors provide equal retirement benefits to male and female employees, even if the contractor incurs greater expense by doing so.

In addition, by establishing when workers affected by pregnancy, childbirth, and related medical conditions are entitled to workplace accommodations, the final rule will protect such employees from losing their jobs, wages, and health-care coverage. OFCCP estimates that 2,046,850 women in the contractor workforce are likely to become pregnant each year.[15]

The final rule will benefit male employees of contractors as well. Male employees, too, experience sex discrimination such as sexual harassment, occupational segregation, and adverse treatment resulting from gender-stereotypical assumptions such as notions about family caregiving responsibilities. The final rule includes several examples of such gender-stereotypical assumptions as they affect men. For example, final rule paragraph 60–20.5(d)(2)(ii) clarifies that family leave must be available to fathers on the same terms as it is available to mothers, and final rule paragraph 60–20.7(d)(4) includes adverse treatment of a male employee who is not available to work overtime or on weekends because he cares for his elderly father as an example of potentially unlawful sex-based stereotyping.

Moreover, by clarifying that discrimination against an individual because of her or his gender identity is unlawful sex discrimination, the final rule ensures that contractors are aware of their nondiscrimination obligations with respect to transgender employees and provide equality of opportunity for transgender employees, the vast majority of whom report that they have experienced discrimination in the workplace.[16]

Finally, replacing the Sex Discrimination Guidelines with the final rule will benefit public understanding of the law. As reflected in Section 6(a) of E.O. 13563, which requires agencies to engage in retrospective analyses of their rules "and to modify, streamline, expand, or repeal [such rules] in accordance with what has been learned," removing an "outmoded" and "ineffective" rule from the Code of Federal Regulations is in the public interest.

Costs of the Final Rule

A detailed discussion of the costs of the final rule is included in the section on Regulatory Procedures, *infra.* In sum, the final rule will impose relatively modest administrative and other cost burdens for contractors to ensure a workplace free of sex-based discrimination.

The only new administrative burden the final rule will impose on contractors is the one-time cost of regulatory familiarization—the estimated time it takes to review and understand the instructions for compliance—calculated at $41,602,500, or $83 per contractor company, the first year.

The only other new costs of this rule that contractors may incur are the costs of pregnancy accommodations, which OFCCP calculates to be $9,671,000 annually or less, or a maximum of $19 per contractor company per year.

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[12] Amendment to Title VII of the Civil Rights Act of 1964 to Prohibit Sex Discrimination on the Basis of Pregnancy, Public Law 95–555, 995, 92 Stat. 2076 (1978), *codified at* 42 U.S.C. 2000e(k).

[13] U.S. General Services Administration, System for Award Management, data released in monthly files, *available at https://www.sam.gov/portal/SAM/#1.*

[14] Bureau of Labor Statistics data establishes that 47 percent of the workforce is female. *Women in the Labor Force: A Databook* 2, BLS Reports, *available at http://www.bls.gov/cps/wlf-databook-2012.pdf* (last accessed March 27, 2016) (Women in the Labor Force). Based on these data, OFCCP estimates that 30.6 million of the employees who work for contractors and other recipients of Federal monies in the SAM database are women.

[15] OFCCP's methodology for arriving at this estimate was described in the preamble to the NPRM. 80 FR at 5262.

[16] Jaime M. Grant, Lisa M. Mottet, & Justin Tanis, National Center for Transgender Equality & National Gay and Lesbian Task Force, Injustice at Every Turn: A Report of the National Transgender Discrimination Survey 3 (2011), *available at http://www.transequality.org/issues/resources/national-transgender-discrimination-survey-executive-summary* (last accessed March 25, 2016) (*Injustice at Every Turn*).

Together, these costs amount to a maximum of $51,273,500, or $103 per contractor company, in the first year, and a maximum of $9,671,000, or $19 per contractor company, each subsequent year. These costs are summarized in Table 1, "New Requirements," *infra*.

Overview

Reasons for Promulgating This New Regulation

As described in the NPRM, since OFCCP's Sex Discrimination Guidelines were promulgated in 1970, there have been dramatic changes in women's participation in the workforce. Between 1970 and February, 2016, women's participation in the labor force grew from 43 percent to 57 percent.[17] This included a marked increase of mothers in the workforce: The labor force participation of women with children under the age of 18 increased from 47 percent in 1975 to 70 percent in 2014.[18] In 2014, both adults worked at least part time in 60 percent of married-couple families with children under 18, and 74 percent of mothers heading single-parent families with children under 18 worked at least part time.[19]

Since 1970, there have also been extensive changes in the law regarding sex-based employment discrimination and in contractor policies and practices governing workers. For example:

- Title VII, which generally governs the law of sex-based employment discrimination, has been amended four times: In 1972, by the Equal Employment Opportunity Act;[20] in 1978, by the PDA; in 1991, by the Civil Rights Act;[21] and in 2009, by the Lilly Ledbetter Fair Pay Act (FPA).[22]
- State "protective laws" that had explicitly barred women from certain occupations or otherwise restricted their employment conditions on the basis of sex have been repealed or are unenforceable.[23]
- In 1993, the Family and Medical Leave Act (FMLA)[24] was enacted, requiring employers with 50 or more employees to provide a minimum of 12 weeks of annual, unpaid, job-guaranteed leave to both male and female employees to recover from their own serious health conditions (including pregnancy, childbirth, or related medical conditions); to care for a newborn or newly adopted or foster child; or to care for a child, spouse, or parent with a serious health condition.
- In 1970, it was not uncommon for employers to require female employees to retire at younger ages than their male counterparts. However, the Age Discrimination in Employment Act was amended in 1986 to abolish mandatory retirement for all employees with a few exceptions.[25]

Moreover, since 1970, the Supreme Court has determined that numerous practices that were not then widely recognized as discriminatory constitute unlawful sex discrimination under title VII. *See e.g., City of Los Angeles* v. *Manhart*, 435 U.S. 702 (1978) (prohibiting sex-differentiated employee pension fund contributions, despite statistical differences in longevity); *Cnty. of Washington* v. *Gunther*, 452 U.S. 161 (1981) (holding that compensation discrimination is not limited to unequal pay for equal work within the meaning of the Equal Pay Act); *Newport News Shipbldg. & Dry Dock Co.* v. *EEOC*, 462 U.S. 669 (1983) (holding that employer discriminated on the basis of sex by excluding pregnancy-related hospitalization coverage for the spouses of male employees while providing complete hospitalization coverage for female employees, resulting in greater insurance coverage for married female employees than for married male employees); *Meritor Sav. Bank* v. *Vinson*, 477 U.S. 57 (1986) (recognizing cause of action for sexually hostile work environment); *Cal. Fed. Sav. & Loan Ass'n* v. *Guerra*, 479 U.S. 272 (1987) (upholding California law requiring up to four months of job-guaranteed leave for pregnant employees and finding law not inconsistent with title VII); *Price Waterhouse* v. *Hopkins*, 490 U.S. 228 (1989) (finding sex discrimination on basis of sex stereotyping); *Oncale* v. *Sundowner Offshore Servs.*, 523 U.S. 75, 79 (1998) (recognizing cause of action for "same sex" harassment); *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am.* v. *Johnson Controls, Inc.*, 499 U.S. 187 (1991) (holding that possible reproductive health hazards to women of childbearing age did not justify sex-based exclusions from certain jobs); *Burlington Indus., Inc.* v. *Ellerth*, 524 U.S. 742 (1998), and *Faragher* v. *City of Boca Raton*, 524 U.S. 775 (1998) (holding employers vicariously liable under title VII for the harassing conduct of supervisors who create hostile working conditions for those over whom they have authority); *Burlington N. & Santa Fe Ry. Co.* v. *White*, 548 U.S. 53 (2006) (clarifying broad scope of prohibition of retaliation for filing charge of sex discrimination); and *Young* v. *United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015) (*Young* v. *UPS*) (holding that the plaintiff created a genuine issue of material fact as to whether the employer accommodated others "similar in their ability or inability to work" when it did not provide light-duty accommodations for pregnancy, childbirth, or related medical conditions, but did provide them for on-the-job injuries, disabilities within the meaning of the Americans with Disabilities Act,[26] and loss of certain truck driver certifications).

In response to these legal and economic changes, the landscape of employment policies and practices has also changed. Contractors rarely adopt or implement explicit rules that prohibit hiring of women for certain jobs. Jobs are no longer advertised in sex-segregated newspaper columns. Women have made major inroads into professions and occupations traditionally dominated by men. For example, women's representation among doctors more than doubled, from approximately 16 percent in 1988 [27] to 38 percent in 2015.[28] Executive suites are no longer predominantly segregated by sex, with all the executive positions occupied by men while women work primarily as secretaries. Indeed, in 2015, women accounted for 39 percent of all managers.[29] Moreover, the female-to-male earnings ratio for women and men working full-time, year-round in all occupations increased from 59 percent in 1970 to 79 percent in 2014.[30]

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[17] U.S. Census Bureau, Statistical Abstract of the United States: 2012, Table 588, *Civilian Population—Employment Status by Sex, Race, and Ethnicity: 1970–2009, available at https://www.census.gov/library/publications/2011/compendia/statab/131ed/labor-force-employment-earnings.html* (last accessed March 27, 2016) (1970 figure); Bureau of Labor Statistics, U.S. Department of Labor Statistics, *Data Retrieval: Labor Force Statistics (Current Population Survey)*, Household Data, Table A–1, Employment status of the civilian population by sex and age, *available at http://www.bls.gov/news.release/empsit.t01.htm* (last accessed March 25, 2016) (2016 figure).

[18] Bureau of Labor Statistics, U.S. Department of Labor, TED: The Economics Daily, Labor force participation rates among mothers, *available at http://www.bls.gov/opub/ted/2010/ted_20100507.htm* (last accessed March 26, 2016) (1975 data); Press Release, Bureau of Labor Statistics, U.S. Department of Labor, Employment Characteristics of Families—2013 (April 23, 2015), *available at http://www.bls.gov/news.release/famee.nr0.htm* (last accessed February 21, 2016) (Employment Characteristics of Families—2014) (2014 data).

[19] Employment Characteristics of Families—2014, *supra* note 18.

[20] Equal Employment Opportunity Act of 1972, Public Law 92–261, 86 Stat. 103 (1972).

[21] Civil Rights Act of 1991, Public Law 102–166, 1745, 105 Stat. 1071 (1991).

[22] Lilly Ledbetter Fair Pay Act of 2009, Public Law 111–2, 123 Stat. 5 (2009).

[23] *See, e.g.,* Conn. Gen. Stat. § 31–18 (*repealed* 1973) (prohibition of employment of women for more than nine hours a day in specified establishments); Mass. Gen. Laws ch. 345 (1911) (*repealed* 1974) (outright prohibition of employment of women before and after childbirth); Ohio Rev. Code Ann. § 4107.43 (*repealed* 1982) (prohibition of employment of women in specific occupations that require the routine lifting of more than 25 pounds); *see also Nashville Gas Co.* v. *Satty*, 434 U.S. 136, 142 (1977) (invalidating public employer requirement that pregnant employees take a leave of absence during which they did not receive sick pay and lost job seniority); *Cleveland Bd. of Educ.* v. *LaFleur*, 414 U.S. 632 (1974) (striking rules requiring leave from after the fifth month of pregnancy until three months after birth); *Somers* v. *Aldine Indep. Sch. Dist.*, 464 F. Supp. 900 (S.D. Tex. 1979) (finding sex discrimination where school district terminated teacher for not complying with requirement that pregnant women take an unpaid leave of absence following their third month or be terminated).

[24] 29 U.S.C. 2601 *et seq.*

[25] 29 U.S.C. 621–634.

[26] Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, as amended (ADA).

Employer-provided insurance policies that provide lower-value or otherwise less comprehensive hospitalization or disability benefits for pregnancy-related conditions than for other medical conditions are now unlawful under title VII.[31] Generous leave and other family-friendly policies are increasingly common. As early as 2000, even employers that were not covered by the FMLA routinely extended leave to their employees for FMLA-covered reasons: two-thirds of such employers provided leave for an employee's own serious health condition and for pregnancy-related disabilities, and half extended leave to care for a newborn child.[32] In recent years, 13 percent of employees had access to *paid* family leave, and most employees received some pay during family and medical leave due to paid vacation, sick, or personal leave or temporary disability insurance.[33]

While these changes in policies and practices show a measure of progress, there is no doubt that sex discrimination remains a significant and pervasive problem. Many of the statistics cited above, while improvements to be sure, are far from evincing a workplace free of discrimination. Sex-based occupational segregation, wage disparities, discrimination based on pregnancy or family caregiving responsibilities, sex-based stereotyping, and sexual harassment remain widespread. Had the incidence of sex discrimination decreased, one would expect at least some decrease in the proportion of total annual EEOC charges that allege sex discrimination. But that proportion has remained nearly constant at around 30 percent since at least 1997.[34]

Sex-Based Occupational Discrimination

Sex-based occupational sex segregation remains widespread:

> In 2012, nontraditional occupations for women employed only six percent of all women, but 44 percent of all men. The same imbalance holds for occupations that are nontraditional for men; these employ only 5 percent of men, but 40 percent of women. Gender segregation is also substantial in . . . broad sectors where men and women work: three in four workers in education and health services are women, nine in ten workers in the construction industry and seven in ten workers in manufacturing are men.[35]

OFCCP has found unlawful discrimination in the form of sex-based occupational segregation in several compliance evaluations of Federal contractors.[36] For example, OFCCP recently found evidence that a call center steered women into lower-paying positions that assisted customers with cable services rather than higher-paying positions providing customer assistance for Internet services because the latter positions were considered "technical"; [37] that a sandwich production plant steered men into dumper/stacker jobs and women into biscuit assembler jobs, despite the fact that the positions required the same qualifications; [38] and that a parking company steered women into lower-paying cashier jobs and away from higher-paying jobs as valets.[39] The

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[27] E. More, "The American Medical Women's Association and the role of the woman physician, 1915–1990," 45 *Journal of the American Medical Women's Association* 165, 178 (1990), *available at* 95th Anniversary Commemorative Booklet, *https://www.amwa-doc.org/about-amwa/history/* (last accessed March 17, 2016).

[28] Bureau of Labor Statistics, U.S. Department of Labor, *Labor Force Statistics from the Current Population Survey,* Table 11, Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity, Household Data Annual Averages, *available at http://www.bls.gov/cps/cpsaat11.htm* (last accessed March 17, 2016) (BLS Labor Force Statistics 2015).

[29] *Id.*

[30] U.S. Census Bureau, *Income and Poverty in the United States: 2014,* Current Population Reports 10 (2015) 41 (Table A–4, Number and Real Median Earnings of Total Workers and Full-Time, Year-Round Workers by Sex and Female-to-Male Earnings Ratio: 1960 to 2014), *available at https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60–252.pdf* (last accessed March 25, 2016) (Income and Poverty Report 2014).

[31] These practices, common before the PDA, were prohibited when the PDA became effective with respect to fringe benefits in 1979. As the EEOC explained in guidance on the PDA issued in 1979:

> A woman unable to work for pregnancy-related reasons is entitled to disability benefits or sick leave on the same basis as employees unable to work for other medical reasons. Also, any health insurance provided must cover expenses for pregnancy-related conditions on the same basis as expenses for other medical conditions.

Appendix to Part 1604—Questions and Answers on the Pregnancy Discrimination Act, 44 FR 23805 (April 20, 1979), 29 CFR part 1604. EEOC's recently issued guidance echoes this earlier interpretation and discusses recent developments on benefits issues affecting PDA compliance. EEOC Enforcement Guidance: Pregnancy Discrimination and Related Issues I.C.2–4 (2015), *available at http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm* (last accessed March 25, 2016) (EEOC Pregnancy Guidance).

[32] Wage and Hour Division, U.S. Department of Labor, *The 2000 Survey Report* ch. 5, Table 5–1. Family and Medical Leave Policies by FMLA Coverage Status, 2000 Survey Report *available at http://www.dol.gov/whd/fmla/chapter5.htm* (last accessed March 25, 2016).

[33] BLS, National Compensation Survey: Employee Benefits in the United States, March 2015 (September 2015), Table 32. Leave benefits: Access, civilian workers, National Compensation Survey, March 2015, *available* at *http://www.bls.gov/ncs/ebs/benefits/2015/ownership/civilian/table32a.pdf* (last accessed February 19, 2016). In addition, in 2012, most employees taking family or medical leave had some access to paid leave: "48% Report[ed] receiving full pay and another 17% receive[d] partial pay, usually but not exclusively through regular paid vacation leave, sick leave, or other 'paid time off' hours." Jacob Klerman, Kelly Daley, & Alyssa Pozniak, Family and Medical Leave in 2012: Executive Summary ii, *http://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Executive-Summary.pdf* (last accessed March 27, 2016).

[34] This rate has varied from a low of 28.5 percent in FY 2011 to a high of 31.5 percent in FY 2000. U.S. Equal Employment Opportunity Commission, *Enforcement and Litigation Statistics,* Charge Statistics: FY 1997 Through FY 2015, *available at http://eeoc.gov/eeoc/statistics/enforcement/charges.cfm* (last accessed February 21, 2016) (*EEOC Charge Statistics*). In FY 2015, the EEOC received 26,396 charges alleging sex discrimination.

One commenter, who nevertheless supports the NPRM, points out that the number of sex discrimination charges filed with the EEOC "decreased by 2000 from 2010 to 2013." It is true that the number of sex discrimination charges filed with the EEOC decreased during this particular time period (by 1342, not by 2000). However, the total number of charges filed decreased during this period (from 99,922 to 88,778), while the percentage of charges alleging sex discrimination increased, from 29.1 percent to 29.5 percent. Moreover, since 1997, the general trend in the raw number of sex discrimination charges filed has been upwards, from 24,728 in FY 1997 to 26,396 charges in FY 2015, with a high of 30,356 charges in FY 2012.

[35] Ariane Hegewisch & Heidi Hartmann, Institute for Women's Policy Research, *Occupational Segregation and the Gender Wage Gap: A Job Half Done* (2014), *available at http://www.iwpr.org/publications/pubs/occupational-segregation-and-the-gender-wage-gap-a-job-half-done* (last accessed March 27, 2016) (citations omitted); *see also* Ariane Hegewisch *et al., The Gender Wage Gap by Occupation,* Fact Sheet #C350a, The Institute for Women's Policy Research, *available at http://www.iwpr.org/publications/pubs/the-gender-wage-gap-by-occupation-2/at_download/file/* (last accessed March 25, 2016) (*IWPR Wage Gap by Occupation*).

[36] The contractors that OFCCP reviewed did not admit that they engaged in unlawful discrimination.

[37] OFCCP Press Release, "Comcast Corporation settles charges of sex and race discrimination" (April 30, 2015), *available at http://www.dol.gov/opa/media/press/ofccp/OFCCP20150844.htm* (last accessed March 25, 2016).

[38] OFCCP Press Release, "Hillshire Brands Co.'s Florence, Alabama, production plant settles charges of sex discrimination with US Labor Department" (September 18, 2014), *available at http://www.dol.gov/opa/media/press/ofccp/OFCCP20141669.htm* (last accessed March 25, 2016).

[39] OFCCP Press Release, "Central Parking System of Louisiana Inc. settles hiring and pay

EEOC and at least one court have found discrimination in similar cases as well.[40]

Sex discrimination and other barriers in the construction trades, on the part of both trade unions and employers, remain a particularly intractable problem. Several commenters described many "barriers for women and girls attempting to access [construction careers] and thrive" in them, both on the job and in apprenticeship programs: gender stereotyping; discrimination in hiring, training, and work and overtime assignments; hostile workplace practices and sexual harassment; insufficient training and instruction; and worksites that fail to meet women's basic needs. One commenter, a female worker in a construction union, recounted "discrimination and sexual harassment so bad" at the construction site that she had to quit. In 2014, OFCCP found sex discrimination by a construction contractor in Puerto Rico that involved several of these barriers: Denial of regular and overtime work hours to female carpenters comparable to those of their male counterparts, sexual harassment of the women, and failure to provide restroom facilities.[41]

Likewise, women continue to be underrepresented in higher-level and more senior jobs within occupations. For example, in 2015, women accounted for only 28 percent both of chief executive officers and of general/operations managers.[42]

Wage Disparities

As mentioned above, in 2014, women working full time earned 79 cents on the dollar compared to men, measured on the basis of median annual earnings.[43] While this represents real progress from the 59 cents on the dollar measured in 1970, the size of the gap is still unacceptable, particularly given that the Equal Pay Act was enacted over 50 years ago. In fact, it appears that the narrowing of the pay gap has slowed since the 1980's.[44] At the rate of progress from 1960 to 2011, researchers estimated it would take until 2057 to close the gender pay gap.[45]

The wage gap is also greater for women of color and women with disabilities. When measured by median full-time annual earnings, in 2014 African-American women made approximately 60 cents and Latinas made approximately 55 cents for every dollar earned by a non-Hispanic, white man.[46] In 2014, median annual earnings for women with disabilities were only 47 percent of median annual earnings for men without disabilities.[47]

Of course, discrimination may not be the cause of the entire gap; these disparities can be explained to some extent by differences in experience, occupation, and industry.[48] However, decades of research show these wage gaps remain even after accounting for factors like the types of work people do and qualifications such as education and experience.[49] Moreover, while some women may work fewer hours or take time out of the workforce because of family responsibilities, research suggests that discrimination and not just choices can lead to women with children earning less; [50] to the extent that the potential explanations such as type of job and length of continuous labor market experience are also influenced by discrimination, the "unexplained" difference may understate the true effect of sex discrimination.[51]

Male-dominated occupations generally pay more than female-dominated occupations at similar skill levels. But even within the same

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discrimination case with US Department of Labor" (September 4, 2014), *available at http://www.dol.gov/opa/media/press/ofccp/OFCCP20140920.htm* (last accessed March 25, 2016).

[40] *See, e.g., EEOC* v. *New Prime, Inc.,* 42 F. Supp. 3d 1201 (W.D. Mo. 2014) (ruling that a trucking company discriminated against female truck driver applicants in violation of title VII by requiring that they be trained by female trainers, of whom there were very few); EEOC Press Release, "Mavis Discount Tire to Pay $2.1 Million to Settle EEOC Class Sex Discrimination Lawsuit" (March 25, 2016), *available at http://www.eeoc.gov/eeoc/newsroom/release/3-25-16.cfm* (last accessed April 4, 2016) (EEOC alleged that tire retailer refused to hire women as managers, assistant managers, mechanics, and tire technicians); EEOC Press Release, "Merrilville Ultra Foods to Pay $200,000 to Settle EEOC Sex Discrimination Suit" (July 10, 2015), *available at http://www.eeoc.gov/eeoc/newsroom/release/7-10-15c.cfm* (last accessed April 4, 2016) (EEOC alleged that grocer refused to hire women for night-crew stocking positions); EEOC Press Release, "Unit Drilling to Pay $400,000 to Settle EEOC Systemic Sex Discrimination Suit" (April 22, 2015), *available at http://www.eeoc.gov/eeoc/newsroom/release/4-22-15a.cfm* (last accessed April 4, 2016) (EEOC alleged that oil drilling company refused to hire women on its oil rigs).

[41] OFCCP Press Release, "Puerto Rico construction contractor settles sexual harassment and discrimination case with US Department of Labor" (April 2, 2014), *available at http://www.dol.gov/opa/media/press/ofccp/OFCCP20140363.htm* (last accessed March 25, 2016).

[42] BLS Labor Force Statistics 2015, *supra* note 28.

[43] Income and Poverty Report 2014, *supra* note 30.

[44] From 1980 to 1989, the percentage of women's earnings relative to men's increased from 60.2 percent to 68.7 percent; from 1990 to 1999, the percentage increased from 71.6 percent to just 72.3 percent; and from 2000 to 2009, the percentage increased from 76.9 percent to 78.6 percent. *Id. See also* Youngjoo Cha & Kim A. Weeden, *Overwork and the Slow Convergence in the Gender Gap in Wages,* Am. Soc. Rev. 1 (2014), *available at http://www.asanet.org/journals/ASR/ChaWeedenJune14ASR.pdf* (last accessed March 25, 2016); Francine D. Blau & Lawrence M. Kahn, *The U.S. Gender Pay Gap in the 1990s: Slowing Convergence,* 60 Indus. & Lab. Rel. Rev. 45 (2006) (*Slowing Convergence*).

[45] Institute for Women's Policy Research, *At Current Pace of Progress, Wage Gap for Women Expected to Close in 2057* (April 2013), *available at http://www.iwpr.org/publications/pubs/at-current-pace-of-progress-wage-gap-for-women-expected-to-close-in-2057 (last accessed March 25, 2016).*

[46] Calculations from U.S. Census Bureau, Historical Income Tables: People, Table P–38, Full-Time, Year-Round Workers by Median Earnings and Sex, *available at https://www.census.gov/hhes/www/income/data/historical/people/* (last accessed February 22, 2016).

[47] Calculation from U.S. Census Bureau, American Fact Finder, "Median earnings in the past 12 months (in 2014 inflation-adjusted dollars) by disability status by sex for the civilian noninstitutionalized population 16 years and over with earnings, 2014 American Community Survey 1-Year Estimates" *available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_1YR_B18140&prodType=table* (last accessed March 25, 2016).

[48] *Equal Pay for Equal Work? New Evidence on the Persistence of the Gender Pay Gap: Hearing Before United States Joint Economic Comm.,* Majority Staff of the Joint Econ. Comm., 111th Cong., Invest in Women, Invest in America: A Comprehensive Review of Women in the U.S. Economy 78, 81–82 (Comm. Print 2010), *available at http://jec.senate.gov/public/?a=Files.Serve&File_id=9118a9ef-0771-4777-9c1f-8232fe70a45c* (last accessed March 25, 2016) (statement of Randy Albelda, Professor of Economics and Senior Research Associate, University of Massachusetts—Boston Center for Social Policy) (*Equal Pay for Equal Work?*).

[49] A 2011 White House report found that while earnings for women and men typically increase with higher levels of education, a male-female pay gap persists at all levels of education for full-time workers (35 or more hours per week), according to 2009 BLS wage data. U.S. Department of Commerce, Economics and Statistics Administration, and Executive Office of the President, Office of Management and Budget, *Women in America: Indicators of Social and Economic Well-Being* 32 (2011), *available at https://www.whitehouse.gov/sites/default/files/rss_viewer/Women_in_America.pdf* (last accessed March 25, 2016). As noted above, potentially nondiscriminatory factors can explain some of the gender wage differences; even so, after controlling for differences in skills and job characteristics, women still earn less than men. *Equal Pay for Equal Work?, supra* note 48, at 80–82. Ultimately, the research literature still finds an unexplained gap exists even after accounting for potential explanations and finds that the narrowing of the pay gap for women has slowed since the 1980s. Joyce P. Jacobsen, *The Economics of Gender* 44 (2007); *Slowing Convergence, supra* note 44.

[50] Shelley J. Correll, Stephen Benard, & In Paik, *Getting a Job: Is There a Motherhood Penalty?* 112 American Journal of Sociology 1297, 1334–1335 (2007), *available at http://gender.stanford.edu/sites/default/files/motherhoodpenalty.pdf* (last accessed March 25, 2016) (*Motherhood Penalty*).

[51] *Strengthening the Middle Class: Ensuring Equal Pay for Women: Hearing Before H. Comm. on Educ. and Labor,* 110th Cong. (2007), *available at http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg34632/html/CHRG-110hhrg34632.htm* (last accessed March 25, 2016) (statement of Heather Boushey, Senior Economist, Center for Economic and Policy Research) ("there are many aspects of women's employment patterns and pay that cannot reasonably be attributed to choice").

occupation, women earn less than men on average. For example, in 2012, full-time earnings for female auditors and accountants were less than 74 percent of the earnings of their male counterparts.[52] Among the 20 most common occupations for women, the occupation of retail sales faced the largest wage gap; women in this occupation earned only 64 percent of what men earned.[53] Likewise, in the medical profession, women earn less than their male counterparts. On average, male physicians earn 13 percent more than female physicians at the outset of their careers, and as much as 28 percent more eight years later.[54] This gap cannot be explained by practice type, work hours, or other characteristics of physicians' work.[55]

Discrimination Based on Pregnancy or Family Caregiving Responsibilities

Despite enactment of the PDA, women continue to report that they have experienced discrimination on account of pregnancy. Between FY 1997 and FY 2011, the number of charges of pregnancy discrimination filed with the EEOC and state and local agencies annually was significant, ranging from a low of 3,977 in 1997 to a high of 6,285 in 2008.[56] The Chair of the EEOC recently testified before a Congressional committee:

> Still today, when women become pregnant, they continue to face harassment, demotions, decreased hours, forced leave, and even job loss. In fact, approximately 70 percent of the thousands of pregnancy discrimination charges EEOC receives each year allege women were fired as a result of their pregnancy.[57]

Low-income workers, in particular, face "extreme hostility to pregnancy." [58]

One commenter provides examples of recent cases to illustrate the prevalence of discrimination against women who are breastfeeding. In one, Donnicia Venters lost her job after she disclosed to her manager that she was breastfeeding and would need a place to pump breast milk.[59] In another, Bobbi Bockoras alleged she was forced to pump breast milk under unsanitary or insufficiently private conditions, harassed, and subjected to retaliation.[60]

In addition, some workers affected by pregnancy, childbirth, or related medical conditions face a serious and unmet need for workplace accommodations, which are often vital to their continued employment and, ultimately, to their health and that of their children. OFCCP is aware of a number of situations in which women have been denied accommodations with deleterious health consequences. For example:

> In one instance, a pregnant cashier in New York who was not allowed to drink water during her shift, in contravention of her doctor's recommendation to stay well-hydrated, was rushed to the emergency room after collapsing at work. As the emergency room doctor who treated her explained, because "pregnant women are already at increased risk of fainting (due to high progesterone levels causing blood vessel dilation), dehydration puts them at even further risk of collapse and injury from falling." Another pregnant worker was prohibited from carrying a water bottle while stocking grocery shelves despite her doctor's instructions that she drink water throughout the day to prevent dehydration. She experienced preterm contractions, requiring multiple hospital visits and hydration with IV fluids. . . . [Another] woman, a pregnant retail worker in the Midwest who had developed a painful urinary tract infection, supplied a letter from her doctor to her employer explaining that she needed a short bathroom break more frequently than the store's standard policy. The store refused. She later suffered another urinary tract infection that required her to miss multiple days of work and receive medical treatment.[61]

In one comment submitted on the NPRM, three organizations that provide research, policy, advocacy, or consulting services to promote workplace gender equality and work-life balance for employees state that they "have seen numerous . . . cases where women are pushed out of work simply because they wish to avoid unnecessary risks to their pregnancy" when doctors advise them to avoid exposure to toxic chemicals, dangerous scenarios, or physically strenuous work to prevent problems from occurring in their pregnancies. "Pregnant workers in physically demanding, inflexible, or hazardous jobs are particularly likely to need accommodations at some point during their pregnancies to continue working safely." [62]

Meanwhile, more women today continue to work throughout their pregnancies and therefore are more likely to need accommodations of some sort. Of women who had their first child between 1966 and 1970, 49 percent worked during pregnancy; of those, 39 percent worked into the last month of their pregnancy. For the period from 2006 to 2008, the proportion of pregnant women working increased to 66 percent, and the proportion of those working into the last month of their pregnancy increased to 82 percent.[63]

Several commenters provided evidence of continued discriminatory practices in the provision of family or medical leave. One explained that

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[52] *IWPR Wage Gap by Occupation, supra* note 35, at 2.

[53] *Id.*

[54] Constanca Esteves-Sorenson & Jason Snyder, *The Gender Earnings Gap for Physicians and Its Increase over Time* 4 (2011), *available at http://faculty.som.yale.edu/ConstancaEstevesSorenson/documents/Physician_000.pdf* (last accessed March 25, 2016).

[55] *Id.* A 2008 study on physicians leaving residency programs in New York State also found a $16,819 pay gap between male and female physicians. Anthony T. LoSasso, Michael R. Richards, Chiu-Fang Chou & Susan E. Gerber, *The $16,819 Pay Gap For Newly Trained Physicians: The Unexplained Trend Of Men Earning More Than Women,* 30 Health Affairs 193 (2011), *available at http://content.healthaffairs.org/content/30/2/193.full.pdf+html* (last accessed March 25, 2016).

[56] EEOC, *Pregnancy Discrimination Charges,* EEOC & FEPAs Combined: FY 1997–FY 2011, *available at http://www.eeoc.gov/eeoc/statistics/enforcement/pregnancy.cfm* (last accessed March 16, 2017). FY 2011 is the last year for which comparable data are available. For each of the years FY 2012–FY 2015, four percent of the charges filed with the EEOC alleged pregnancy discrimination. OFCCP calculations made from data from EEOC, *Pregnancy Discrimination Charges,* FY 2010–FY 2015, *available at http://www.eeoc.gov/eeoc/statistics/enforcement/pregnancy_new.cfm* (last accessed March 17, 2016), and EEOC *Charge Statistics, supra* note 34.

[57] Testimony of EEOC Chair Jenny Yang Before the Senate Committee on Health, Education, Labor and Pensions 4 (May 19, 2015), *available at http://www.help.senate.gov/imo/media/doc/Yang.pdf* (last accessed March 25, 2016) (Yang Testimony).

[58] Stephanie Bornstein, Center for WorkLife Law, UC Hastings College of the Law, *Poor, Pregnant and Fired: Caregiver Discrimination Against Low-Wage Workers* 2 (2011), *available at http://worklifelaw.org/pubs/PoorPregnantAndFired.pdf* (last accessed March 27, 2016).

[59] *See EEOC* v. *Houston Funding II, Ltd.,* 717 F.3d 425, 427 (5th Cir. 2013) (reversing summary judgment for defendant and holding that discrimination on the basis of lactation is sex discrimination under title VII).

[60] *See* Amended Complaint, *Bockoras* v. *St. Gobain Containers,* No. 1:13–cv–0334, Document No. 44 (W.D. Pa. March 6, 2014). The commenter reported that the company denied the allegations, but the case settled.

[61] Brief of Health Care Providers, the National Partnership for Women & Families, and Other Organizations Concerned with Maternal and Infant Health as *Amici Curiae* in Support of Petitioner in *Young* v. *United Parcel Service,* at 9–10, 11 (citations omitted), *available at http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV4/12-1226_pet_amcu_hcp-etal.authcheckdam.pdf* (last accessed March 25, 2016). *See also Wiseman* v. *Wal-Mart Stores, Inc.,* No. 08–1244–EFM, 2009 WL 1617669 (D. Kan. June 9, 2009) (pregnant retail employee with recurring urinary and bladder infections caused by dehydration alleged she was denied permission to carry a water bottle despite doctor's note), *available at http://www.gpo.gov/fdsys/pkg/USCOURTS-ksd-6_08-cv-01244/pdf/USCOURTS-ksd-6_08-cv-01244-0.pdf* (last accessed March 27, 2016).

[62] National Women's Law Center & A Better Balance, It Shouldn't Be a Heavy Lift: Fair Treatment for Pregnant Workers 5 (2013), *available at http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers.pdf* (last accessed March 25, 2016) (*Heavy Lift*).

[63] U.S. Census Bureau, *Maternity Leave and Employment Patterns of First-Time Mothers: 1961–2008,* at 4, 7 (2011), *available at http://www.census.gov/prod/2011pubs/p70-128.pdf* (last accessed March 25, 2016) (tables 1 and 3).

"[w]orkplaces routinely offer fewer weeks of 'paternity' leave than 'maternity' leave" and that such policies "can be particularly detrimental to LGBT [lesbian, gay, bisexual, and transgender] people, who are more likely to be adoptive parents and, as such, may not be able to access traditional 'maternity' leave frequently reserved for workers who have given birth to a child." Another, a provider of legal services to low-income clients, stated that "[l]ow wage workers are often put on leave before they want or need it" and that such workers, "when not covered by FMLA, . . . are frequently denied leave despite a disparate impact based on gender without business necessity."

Sexual Harassment

The EEOC adopted sexual harassment guidelines in 1980, and the Supreme Court held that sexual harassment is a form of sex discrimination in 1986.[64] Nevertheless, as several commenters report, sexual harassment continues to be a serious problem for women in the workplace and a significant barrier to women's entry into and advancement in many nontraditional occupations, including the construction trades[65] and the computer and information technology industries.[66] In fact, in FY 2015, the EEOC received 6,822 sexual harassment charges—7.6 percent of the total of 89,385 charges filed.[67] This percentage is hardly different from FY 2010, when the number of sexual harassment charges the EEOC received was 8.0 percent of the total charges filed.[68]

Sex-Based Stereotyping

In some ways, the nature of sex discrimination has also changed since OFCCP promulgated the Sex Discrimination Guidelines. Explicit sex segregation, such as facial "male only" hiring policies, has been replaced in many workforces by less overt mechanisms that nevertheless present real equal opportunity barriers.

One of the most significant barriers is sex-based stereotyping. Decades of social science research have documented the extent to which sex-based stereotypes about the roles of women and men and their respective capabilities in the workplace can influence decisions about hiring, training, promotions, pay raises, and other conditions of employment.[69] As the Supreme Court recognized in 1989, an employer engages in sex discrimination where the likelihood of promotion for female employees depends on whether they fit their managers' preconceived notions of how women should dress and act.[70] Research clearly demonstrates that widely held social attitudes and biases can lead to discriminatory decisions, even where there is no formal sex-based (or race-based) policy or practice in place.[71] One commenter on the NPRM highlights a study showing, through both a laboratory experiment and a paired-resume audit, that stereotypes about caregiving responsibilities affect women's employment opportunities significantly. In the experimental study, only 47 percent of mothers were recommended for hire, compared to 84 percent of female non-mothers (*i.e.,* non-mothers were recommended for hire 1.8 times more frequently than mothers); mothers were offered starting salaries $11,000 (7.4 percent) less than those offered to non-mothers; mothers were less likely to be recommended for promotion to management positions; and being a parent lowered the competence ratings for women but not for men. In the audit, non-mothers received 2.1 times as many call-backs as equally qualified mothers.[72] Sex-based stereotyping may have even more severe consequences for transgender, lesbian, gay, and bisexual applicants and employees, many of whom report that they have experienced discrimination in the workplace.[73]

In sum, with the marked increase of women in the labor force, the changes in employment practices, and numerous key legal developments since 1970, many of the provisions in the Guidelines are outdated, inaccurate, or both. At the same time, there are important and current areas of law that the Guidelines fail to address at all. For those reasons, OFCCP is replacing the Guidelines with a new final rule that addresses these changes.

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[64] EEOC Guidelines on Discrimination Because of Sex, 29 CFR 1604.11 (1980), *available at http://www.gpo.gov/fdsys/pkg/CFR-2014-title29-vol4/xml/CFR-2014-title29-vol4-part1604.xml* (last accessed March 25, 2016) (provision on harassment); *Meritor Sav. Bank* v. *Vinson,* 477 U.S. 57 (1986). The Court reaffirmed and extended that holding in 1993. *Harris* v. *Forklift Sys.,* 510 U.S. 17 (1993). Lower courts had held that sexual harassment is a form of sex discrimination since the late 1970s. *See, e.g., Barnes* v. *Costle,* 561 F.2d 983 (D.C. Cir. 1977).

[65] *See* National Women's Law Center, *Women in Construction: Still Breaking Ground* 8 (2014), *available at http://nwlc.org/wp-content/uploads/2015/08/final_nwlc_womeninconstruction_report.pdf* (last accessed March 17, 2016).

[66] *See* Women in Tech, Elephant in the Valley (2016), *http://elephantinthevalley.com/* (last accessed March 16, 2016) (60% of respondents to survey of women who worked in the technology industry experienced unwanted sexual advances).

[67] EEOC, *Enforcement & Litigation Statistics, Sexual Harassment Charges FY 2010–2015, available at http://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_new.cfm* (last accessed March 17, 2016); *EEOC Charge Statistics, supra* note 34.

[68] *Id.*

[69] *See, e.g.,* Susan Fiske *et al., Controlling Other People: The Impact of Power on Stereotyping,* 48 a.m. Psychol. 621 (1993), *available at https://www.researchgate.net/publication/14870029_Controlling_Other_People_The_Impact_of_Power_on_Stereotyping* (last accessed March 27, 2016); Anthony Greenwald and Mahzarin Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem and Stereotypes,* 102 Psychol. Rev. 4 (1995); Brian Welle & Madeline Heilman, *Formal and Informal Discrimination Against Women at Work,* in Managing Social and Ethical Issues in Organizations 23 (Stephen Gilliland, Dirk Douglas Steiner & Daniel Skarlicki eds., 2007); Susan Bruckmüller, Michelle Ryan, Floor Rink, and S. Alexander Haslam, *Beyond the Glass Ceiling: The Glass Cliff and Its Lessons for Organizational Policy,* 8 Soc. Issues & Pol. Rev. 202 (2014) (describing the role of sex-based stereotypes in the workplace).

[70] *Price Waterhouse,* 490 U.S. at 235, 250–51. Men, too, can experience adverse effects from sex-based stereotyping.

[71] *See, e.g.,* Kevin Lang & Jee-Yeon K. Lehmann, *Racial Discrimination in the Labor Market: Theory and Empirics* (NBER Working Paper No. 17450, 2010), *available at http://www.nber.org/papers/w17450* (last accessed March 27, 2016); Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Brendan More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination,* 94(4) American Econ. Rev. (2004); Ian Ayres & Peter Siegelman, *Race and Gender Discrimination in Bargaining for a New Car,* 85(3) Am. Econ. Rev. (1995); Marc Bendick, Charles Jackson & Victor Reinoso, *Measuring Employment Discrimination Through Controlled Experiments,* 23 Rev. of Black Pol. Econ. 25 (1994).

One commenter expressed concern that this statement, which was made originally in the NPRM, demonstrates an OFCCP enforcement approach contrary to *Wal-Mart Stores, Inc.* v. *Dukes,* 131 S. Ct. 2541 (2011). Although the plaintiffs in *Wal-Mart* raised sex discrimination claims under title VII, the Supreme Court's decision was based on plaintiffs' failure to satisfy procedural requirements under the Federal Rules of Civil Procedure (FRCP) regarding class action lawsuits. Unlike private plaintiffs, who must prevail on class certification motions to bring suit on behalf of others, OFCCP is a governmental agency that is authorized to act in the public's interest to remedy discrimination. It is not subject to the limitations and requirements of class certification under the FRCP. To the extent that the Supreme Court's decision in *Wal-Mart* addresses title VII principles that apply outside the context of class certification, OFCCP follows those principles in its enforcement of Executive Order 11246.

[72] *Motherhood Penalty, supra* note 50, at 1316, 1318, 1330.

[73] *Injustice at Every Turn, supra* note 16; Center for American Progress and Movement Advancement Project, Paying an Unfair Price: The Financial Penalty for Being LGBT in America 18–19 (September 2014; updated November 2014), *available at http://www.lgbtmap.org/policy-and-issue-analysis/unfair-price* (last accessed March 27, 2016) (discussing studies showing LGBT-based employment discrimination); Brad Sears & Christy Mallory, The Williams Institute, Documented Evidence of Employment Discrimination & Its Effects on LGBT People (2011), *available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-20111.pdf* (last accessed March 27, 2016). Further discussion of discrimination on the basis of sexual orientation and gender identity can be found *infra* in the passages on paragraph 60–20.2(a) and § 60–20.7.

Overview of the Comments

Prior to issuing an NPRM, OFCCP consulted a small number of individuals from the contractor community, women's groups, and other stakeholders to understand their views on the provisions in the Sex Discrimination Guidelines, specifically which provisions should be removed, updated, or added. There was substantial overlap in opinion among these experts about these matters. In particular, they stated that the second sentence in § 60–20.3(c) of the Guidelines, addressing employer contributions for pensions and other fringe benefits, is an incorrect statement of the law; that the references to State "protective" laws in § 60–20.3(f) of the Guidelines are outmoded; that § 60–20.3(g) of the Guidelines, concerning pregnancy, should be updated to reflect the PDA; and that the reference to the Wage and Hour Administrator in § 60–20.5(c) of the Guidelines should be removed, as the Wage and Hour Administrator no longer enforces the Equal Pay Act.

OFCCP received 553 comments on the NPRM. They include 445 largely identical form-letter comments from 444 individuals expressing general support, apparently as part of an organized comment-writing effort.[74] The 108 remaining comments, representing diverse perspectives, include comments filed by one small business contractor; one construction contractor; two law firms representing contractors; three contractor associations; four associations representing employers (including contractors); one contractor consultant; 23 civil rights, women's, and LGBT organizations; one union; a provider of legal services to low-income individuals; one religious organization; a state credit-union association that has 400 credit-union members; and many individuals.

Many additional organizations express their views by signing on to comments filed by other organizations, rather than by separately submitting comments.[75] For example, 70 national, regional, state, and local women's, civil rights, LGBT, and labor organizations and coalitions of such organizations, all co-sign one comment filed by a women's organization. Similarly, three major organizations representing employers join a comment filed by one of them. Altogether, 101 unique organizations file or join comments generally supportive of the rule; 14 unique organizations file or join comments generally opposed to the rule.[76]

The commenters raise a range of issues. Among the common or significant suggestions are those urging OFCCP:

- To add sexual orientation discrimination as a form of sex discrimination;
- to prohibit single-user restrooms from being segregated by sex;
- to clarify application of the BFOQ defense to gender identity discrimination;
- to require contractor-provided health insurance to cover gender-transition-related health care;
- to clarify that contractors' good faith affirmative action efforts after identifying underrepresentation of women in job groups are not inconsistent with the final rule;
- to specify factors that are legitimate for the purposes of setting pay;
- to remove the requirements that contractor-provided health insurance cover contraception and abortion (where the life of the mother would be endangered if the fetus were carried to term or medical complications have arisen from an abortion), and further arguing that application of some provisions in the proposed rule to contractors with religious objections are contrary to the Religious Freedom Restoration Act (RFRA);
- to clarify application of *Young* v. *UPS, supra,* to the section addressing pregnancy-related accommodations;
- to require reasonable accommodation for pregnancy as a form of affirmative action;
- to clarify the relationship of FMLA leave to any leave that may be required by this rule;
- to add language concerning vicarious liability and negligence involving sexual harassment perpetrated by lower-level supervisors; and
- to add various examples of disparate-treatment or disparate-impact discrimination to the examples in the NPRM.

OFCCP's responses to these comments are discussed in connection with the relevant sections in the Section-by-Section Analysis.

There were also comments associated with the cost and burden of the proposed rule. OFCCP's responses to these comments are discussed in the section on Regulatory Procedures.

OFCCP carefully considered all of the comments in development of this final rule. In response to comments, or in order to clarify and focus the scope of one or more provisions while not increasing the estimated burden, the final rule revises some of the NPRM's provisions.

Overview of the Final Rule

Like the proposed rule, the final rule is organized quite differently than the Guidelines. One change is that while discussion of the BFOQ defense was repeated in several different sections of the Guidelines, the final rule consolidates this discussion into one section covering BFOQs.

Another major change is the reorganization of § 60–20.2 in the Guidelines, which addressed recruitment and advertisement. Guidelines paragraph 60–20.2(a), which required recruitment of men and women for all jobs unless sex is a BFOQ, is subsumed in § 60–20.2 of the final rule, which states and expands on the general principle of nondiscrimination based on sex and sets forth a number of examples of discriminatory practices. Guidelines paragraph 60–20.2(b) prohibited "[a]dvertisement in newspapers and other media for employment" from "express[ing] a sex preference unless sex is a *bona fide* occupational qualification for the job." This statement does not have much practical effect, because few job advertisements today express a sex preference. It is therefore omitted from the final rule. Recruitment for individuals of a certain sex for particular jobs, including recruitment by advertisement, is covered in final rule paragraph 60–20.2(b)(10).

A third major change is the reorganization of § 60–20.3 in the Guidelines. Entitled "Job policies and practices," this section addressed a contractor's general obligations to ensure equal opportunity in employment on the basis of sex (Guidelines paragraphs 60–20.3(a), 60–20.3(b), and 60–20.3(c)); examples of discriminatory treatment (Guidelines paragraph 60–20.3(d)); the provision of physical facilities, including bathrooms (Guidelines paragraph 60–20.3(e)); the impact of state protective laws (Guidelines paragraph 60–20.3(f)); leave for childbearing (Guidelines paragraph 60–20.3(g)); and specification of retirement age (Guidelines paragraph 60–20.3(h)). Guidelines paragraph 60–20.3(i) stated that differences in capabilities for job assignments among individuals may be recognized by the employer in making specific assignments.

As mentioned above, the final rule relocates the general obligation to ensure equal employment opportunity and the examples of discriminatory practices to § 60–20.2. Guidelines paragraph 60–20.3(e), regarding gender-neutral provision of physical facilities, is now addressed in paragraphs 60–20.2(b)(12) and (13) and 60–20.2(c)(2) of the final rule. Guidelines paragraph 60–20.3(f), addressing state protective laws, is not included in the final rule because it is unnecessary and anachronistic. The example at paragraph 60–20.2(b)(8) in the final rule, prohibiting sex-based job classifications, clearly states the underlying principle that absent a job-specific BFOQ, no job is the separate domain of any sex.[77]

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[74] One of these individuals submitted virtually identical comments twice.

[75] The result is that eight comments are co-signed by multiple organizations.

[76] For this count, OFCCP includes state and regional chapters and affiliates of national organizations individually as commenters, separate from those national organizations.

Guidelines paragraph 60–20.3(g), regarding leave for childbearing, is now addressed in § 60–20.5 of the final rule on discrimination on the basis of pregnancy, childbirth, or related medical conditions. Guidelines paragraph 60–20.3(h), which prohibited differential treatment between men and women with regard to retirement age, is restated and broadened in the final rule, at paragraph 60–20.2(b)(7); it prohibits the imposition of sex-based differences not only in retirement age but also in "other terms, conditions, or privileges of retirement." Guidelines paragraph 60–20.3(i) stated that the Sex Discrimination Guidelines allowed contractors to recognize differences in capabilities for job assignments in making specific assignments and reiterated that the purpose of the Guidelines was "to insure that such distinctions are not based upon sex." This paragraph is omitted from the final rule because it is unnecessary and because its second sentence is repetitive of § 60–20.1 in the final rule. Implicit in the provisions prohibiting discrimination on the basis of sex is the principle that distinctions for other reasons, such as differences in capabilities, are not prohibited. Distinguishing among employees based on their relevant job skills, for example, does not constitute unlawful discrimination.

Where provisions of the Guidelines are uncontradicted by the final rule but are omitted from it because they are, as a practical matter, outdated, their omission does not mean that they are not still good law. For example, the prohibition of sex-specific advertisements in newspapers and other media in Guidelines paragraph 60–20.2(b) remains a correct statement of the law.

Comments on Language Usage Throughout the Rule

A number of commenters make recommendations about the language that OFCCP should use throughout the rule. Two commenters suggest that the rule should refer to "gender discrimination" instead of "sex discrimination." OFCCP follows Title VII case law in interpreting "sex" discrimination to include gender discrimination.[78] The NPRM used the word "sex" when referring to sex discrimination because "sex" is used in E.O. 11246, and the word "gender" in the phrase "gender identity" because "gender" is used in E.O. 13672. For these reasons, except where quoting or paraphrasing comments or references that use the terms differently, the final rule continues that usage.

Three comments (joined by four commenters) recommend that phrases such as "he or she" and "his or her" be replaced with gender-neutral language such as "they" and "their" in order to recognize that some gender-nonconforming individuals prefer not to be identified with either gender. OFCCP declines to make this change. While it acknowledges that grammatical rules on this point may evolve, OFCCP believes it would be less confusing to a lay reader to use the more commonly understood formulations "he or she" and "him or her," rather than a singular "they." However, in a number of places in the rule and preamble, OFCCP replaces the singular "he or she" forms of pronouns with the plural "they" forms where it is possible to make all the references in the sentence plural. For instance, the example of sex stereotyping in § 60–20.7(b) now reads: "Adverse treatment of employee*s* or applicant*s* for employment because of *their* actual or perceived gender identity or transgender status" (emphasis added), rather than "Adverse treatment of an employee or applicant for employment because of his or her actual or perceived gender identity or transgender status." Where "his or her" or similar language does appear, it should be read to encompass people who do not identify as either gender.

Three comments (joined by five commenters) urge OFCCP to use gender-neutral terminology in the various illustrative examples throughout the rule. OFCCP intentionally drafted the examples that are not gender-neutral in this manner, because they are common types of discrimination: *e.g.*, (in the proposed rule), "Denying women with children an employment opportunity that is available to men with children" (paragraph 60–20.2(b)(2)); "Height and/or weight qualifications that are not necessary to the performance of the job and that negatively impact women substantially more than men" (paragraph 60–20.2(c)(1)); "Failure to promote a woman, or otherwise subjecting her to adverse employment treatment, based on sex stereotypes about dress, including wearing jewelry, make-up, or high heels" (paragraph 60–20.7(a)(1)); "A contractor must provide job-guaranteed family leave, including any paid leave, for male employees on the same terms that family leave is provided for female employees" (paragraph 60–20.5(c)(2)(ii)). OFCCP declines to change these examples to make them gender-neutral.

One commenter urges OFCCP to replace the terms "pregnant people" and "people of childbearing capacity" used in the NPRM with the terms "pregnant women" and "women of childbearing capacity." Another commenter commends OFCCP for "recognizing that some persons who have the physiology necessary to have a chance of becoming pregnant do not identify as women." OFCCP declines to make the suggested replacements.

Section-by-Section Analysis

This Section-by-Section Analysis describes each section in the proposed rule and identifies and discusses the significant comments received and any changes made.

Title of the Regulations

Four comments (joined by six commenters) question OFCCP's authority to issue regulations with the force of law. Specifically, these comments argue that Congress did not grant the EEOC authority to promulgate substantive title VII regulations and, further, that because OFCCP's regulations are enforced consistently with title VII, OFCCP cannot promulgate regulations having the force and effect of law. OFCCP did not propose substantive title VII regulations; it proposed regulations interpreting the Executive Order. Throughout the NPRM, OFCCP explained that E.O. 11246 grants the agency authority to promulgate these regulations. In particular, Section 201 of the Executive Order states that "[t]he Secretary [of Labor] shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order." One stated purpose of E.O. 11246 is to prohibit discrimination against an employee or applicant for employment because of sex.[79] Although the EEOC does not have statutory authority to issue substantive regulations under title VII, OFCCP is clearly granted the authority to issue substantive rules and regulations to implement the nondiscrimination provisions of E.O. 11246. The Federal Property and Administrative Services Act of 1949 authorizes a broad array of government contracting requirements, including E.O. 11246's nondiscrimination requirements, to achieve that act's goal of economical and efficient procurement.[80] E.O. 11246 has the force and effect of law.[81] Regulations issued pursuant to E.O. 11246 also have the force and effect of law, as they are not plainly inconsistent with the Executive Order and are thus also entitled to deference.[82] OFCCP's decision to promulgate substantive regulations implementing the sex-based nondiscrimination provision is authorized by the Executive Order.

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[77] One comment discusses the issue of state protective laws. It agrees with OFCCP's view that the provision is unnecessary and anachronistic, because "45 years of history have made clear that [state protective] laws violate Title VII and EO 11246 as amended." *See Int'l Union, United Auto., Aerospace & Agric. Implement. Workers of Am.* v. *Johnson Controls, Inc.*, 499 U.S. 187 (1991) (holding that possible reproductive health hazards to women of childbearing age did not justify sex-based exclusions from certain jobs).

[78] *Price Waterhouse* v. *Hopkins*, 490 U.S. 228, 250 (1989) ("In the context of sex stereotyping, an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender."); see, *e.g.*, *Smith* v. *City of Salem*, 378 F. 3d 566, 572 (6th Cir. 2004).

The comments also state that OFCCP's promulgation of these substantive regulations governing discrimination on the basis of sex is an inappropriate departure from its prior Sex Discrimination Guidelines. While the former part 60–20 was titled "Sex Discrimination Guidelines," these too were regulations with the force and effect of law, promulgated under the clear authority of E.O. 11246. OFCCP's decision to rename these regulations does not affect their legal status.

Therefore, OFCCP adopts the proposed change in the title of part 60–20 to "Discrimination on the Basis of Sex," to make clear that its provisions are regulations implementing E.O. 11246 with the full force and effect of law.

Section 60–20.1 Purpose

The NPRM deleted the words "Title and" from the heading of § 60–20.1 in the Guidelines, as well as the second sentence of that section, which gave the reasons for adopting the Guidelines in 1970. The NPRM also clarified that this part is to be read in conjunction with all the provisions in OFCCP's regulations related to implementation of E.O. 11246 by listing them specifically. OFCCP received no comments on these proposed changes, and it adopts them.

The final rule also adds a sentence to § 60–20.1. This new sentence reads: "For instance, under no circumstances will a contractor's good faith efforts to comply with the affirmative action requirements of part 60–2 of this chapter be considered a violation of this part." OFCCP adds this sentence to respond to the concern that five contractors express that the prohibitions of sex discrimination in the NPRM could be read to conflict with contractors' obligations to undertake good faith efforts to expand employment opportunities for women contemplated by part 60–2.

Two commenters recommend that OFCCP add a reference to contractors' duties as part of Joint Training Councils in recruiting, accepting, training, and employing apprentices in the first sentence of § 60–20.1. Joint Training Councils, committees composed of representatives of construction labor unions and construction management, jointly sponsor most registered apprenticeship programs in the construction industry.[83] OFCCP agrees that contractors' nondiscrimination obligations extend to the execution of their duties as part of Joint Training Councils in recruiting, accepting, training, and employing apprentices, and it will interpret the rule accordingly. OFCCP declines, however, to add the suggested language to this section, as it is too specific for a section delineating the overall purpose of a rule.

Section 60–20.2 General Prohibitions

In the proposed rule, paragraph 60–20.2(a) set forth the general prohibition that contractors may not discriminate against any applicant or employee because of sex and stated that the term "sex" includes, but is not limited to, pregnancy, childbirth, or related medical conditions; gender identity; and transgender status. In the final rule, OFCCP adds "sex stereotyping" to this list. One comment requests this addition, on the ground that one of the most important aspects of the rulemaking is to clarify that sex stereotyping is a form of sex discrimination. OFCCP agrees with this reasoning and inserts the term "sex stereotyping" in the second sentence of paragraph 60–20.2(a).

A large number of commenters, including the 70 signers to the comment from a women's organization, as well as a contractor association, support inclusion of "gender identity" and "transgender status" in paragraph 60–20.2(a) as consistent with title VII law.

Two comments, the one from a religious organization and the joint comment from three employer groups mentioned above, do not support identification of gender identity and transgender status discrimination as forms of sex discrimination. The religious organization argues that inclusion of gender identity discrimination as a form of sex discrimination (either directly or as a form of sex-stereotyping discrimination) is inconsistent with title VII law and with Congressional efforts to ban gender identity discrimination in employment. The religious organization also claims that including gender identity discrimination would interfere with religious contractors' rights under RFRA.[84] The joint employer group comment argues that inclusion of gender identity discrimination as a form of sex discrimination is not settled under title VII law[85] and is inconsistent with E.O. 13672's separate amendment of E.O. 11246 adding gender identity discrimination; it recommends that OFCCP address gender identity discrimination only as part of guidance on the final rule implementing E.O. 13672.

As explained above, OFCCP is not adopting substantive title VII regulations; it is adopting regulations interpreting the Executive Order. OFCCP's inclusion of gender identity and transgender status in the rule is consistent with the agency's prior interpretation of the Executive Order, as articulated in its August 19, 2014 directive, which states that OFCCP "will investigate and seek to remedy instances of sex discrimination that occur because of an employee's gender identity or transgender status."[86]

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[79] *See* E.O. 11246 sec. 202(1).

[80] *See* 40 U.S.C. 101 (establishing the act's goal of providing the Federal government "with an economical and efficient system for . . . (1) Procuring and supplying property and nonpersonal services, and performing related functions including contracting . . \."); 40 U.S.C. 121(a) (authorizing the President to "prescribe policies and directives that the President considers necessary to carry out" the act).

[81] *See Liberty Mut. Ins. Co.* v. *Friedman,* 639 F.2d 164 (4th Cir. 1981); *United States* v. *Miss. Power & Light Co.,* 638 F.2d 899 (5th Cir. 1981); *Legal Aid Soc'y* v. *Brennan,* 608 F.2d 1319 (9th Cir. 1979); *Ne. Constr. Co.* v. *Romney,* 485 F.2d 752 (D.C. Cir. 1973); *Contractor's Ass'n* v. *Sec'y of Labor,* 442 F.2d 159, 166–71 (3d Cir. 1971); *Uniroyal Inc.* v. *Marshall,* 482 F. Supp. 364, 368 (D.D.C. 1979).

[82] *Id. See also Beverly Enter.* v. *Herman,* 130 F. Supp. 2d 1, 9 n.4 (D.D.C. 2000).

[83] Center for Construction Research and Training, *The Construction Chart Book: The U.S. Construction Industry and Its Workers* (Fifth Edition), § 31, *available at http://www.cpwr.com/publications/construction-chart-book* (last accessed March 27, 2016).

[84] The religious organization also claims that including gender identity discrimination would interfere with non-transgender employees' "legitimate expectation of privacy in workplace restrooms and locker rooms." This argument is addressed in connection with proposed paragraph 60–20.2(b)(9), *infra.*

[85] Specifically, the comment states that while the theory that sex discrimination applies to discrimination based on gender identity (and sexual orientation) may be consistent with EEOC's interpretation of title VII, it is not fully embraced by the Federal judicial system.

In addition, OFCCP does not find inclusion of gender identity and transgender status in the rule to be inconsistent with title VII law. As discussed in the preamble to the NPRM, in *Macy* v. *Holder,* the EEOC commissioners unanimously concluded that discrimination on the basis of gender identity is, by definition, sex discrimination in violation of title VII, because the discriminatory act is "related to the sex of the victim."[87] The EEOC cited both the text of title VII and the reasoning in *Schroer* v. *Billington*[88] for its conclusion. Similarly, it is the position of the U.S. Department of Justice that "[t]he most straightforward reading of Title VII is that discrimination 'because of . . . sex' includes discrimination because an employee's gender identification is as a member of a particular sex, or because the employee is transitioning, or has transitioned, to another sex."[89]

Indeed, a number of Federal appellate and district court decisions establish that disparate treatment of a transgender employee may constitute discrimination because of the individual's non-conformity to sex-based stereotypes.[90] This principle is reflected in § 60–20.7 of the final rule.

OFCCP also does not find inclusion of gender identity and transgender status in the rule to be inconsistent with Congressional efforts to ban gender identity discrimination in employment or with E.O. 13672's separate amendment of E.O. 11246 adding gender identity to the list of protected categories. Overlapping prohibitions of discrimination are not uncommon. When President Johnson amended E.O. 11246 in 1967 to add sex to the list of prohibited categories, for example, title VII already prohibited sex discrimination in employment by most covered contractors. The fact that gender identity is both a stand-alone protected category and subsumed under the term "sex" simply means that Federal contractor employees and applicants can pursue claims of gender identity discrimination in two ways, and OFCCP can address violations either as sex discrimination or as gender identity discrimination (or both).

Therefore, OFCCP declines to depart from the "most straightforward reading of Title VII" by removing the terms "gender identity" and "transgender status" from paragraph 60–20.2(a). OFCCP also declines to remove any of the references to gender identity discrimination as a form of sex stereotyping from the final rule. Nor does OFCCP accept the suggestion that it address gender identity discrimination only under the final rule implementing Executive Order 13672. If contractors or workers are confused about the two avenues, OFCCP will consider developing additional guidance materials to be posted on its Web site, as it regularly does.

On the subject of RFRA, the religious organization commenter asks OFCCP to clarify in the final rule that RFRA forbids application of this paragraph, as well as proposed paragraphs 60–20.7(a)(3) (regarding adverse treatment based on failure to conform to sex-role expectations by being in a relationship with a person of the same sex) and 60–20.7(b) (regarding adverse treatment based on gender identity or transgender status), to contractors with religious objections to those provisions.[91]

OFCCP declines to implement a blanket exemption from these provisions because claims under RFRA are inherently individualized and fact specific. There is no formal process for invoking RFRA specifically as a basis for an exemption from E.O. 11246. Insofar as the application of any requirement under this part would violate RFRA, such application shall not be required.

If a contractor seeks an exemption to E.O. 11246 pursuant to RFRA, OFCCP will consider that request based on the facts of the particular case. OFCCP will do so in consultation with the Solicitor of Labor and the Department of Justice, as necessary. OFCCP will apply all relevant case law to the facts of a given case in considering any invocation of RFRA as a basis for an exemption.

OFCCP also notes that the Supreme Court has recognized that the First Amendment to the Constitution requires a "ministerial exception" from employment discrimination laws, which prohibits the government from interfering with the ability of a religious organization to make employment decisions about its "ministers," a category that includes, but is not limited to, clergy. OFCCP follows this precedent.

Finally, OFCCP notes that E.O. 11246 contains an exemption that specifically allows religiously affiliated contractors (religious corporations, associations, educational institutions, or societies) to favor individuals of a particular religion when making employment decisions.[92] The regulation implementing that exemption states that the nondiscrimination obligations of E.O. 11246 "shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this Order." OFCCP has already published guidance regarding the application of the religious exemption in Executive Order 11246 in connection with the recent Executive Order 13672 rulemaking.[93] If, however, a contractor is unsure about whether its employment practices are shielded by this exemption, it can seek guidance from OFCCP.

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[86] OFCCP Directive 2014–02 (August 19, 2014), *available at http://www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html* (last accessed March 27, 2016). The purpose of Directive 2014–02 is to clarify that existing agency guidance on discrimination on the basis of sex under E.O. 11246 includes discrimination on the bases of gender identity and transgender status. Further, this directive made clear that OFCCP's interpretation of the Executive Order is consistent with the EEOC's position that, under title VII, discrimination based on gender identity or transgender status is discrimination based on sex.

[87] *Macy* v. *Holder,* Appeal No. 0120120821, 2012 WL 1435995, at *7 (EEOC) (2012), *available at http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt* (last accessed March 27, 2016), on remand, Department of Justice (DOJ) Final Agency Decision, Agency Complaint No. ATF–2011–00751, DJ No. 187–9–149 (July 8, 2013).

[88] *Schroer* v. *Billington,* 577 F. Supp. 2d 293 (D.D.C. 2008).

[89] Memorandum from Attorney General Eric Holder to United States Attorneys and Heads of Department Components (December 15, 2014), *available at http://www.justice.gov/file/188671/download* (last accessed March 27, 2016).

[90] *See, e.g., Smith* v. *City of Salem, supra* note 78, 378 F.3d at 575 ("discrimination against a plaintiff who is a transsexual—and therefore fails to act and/or identify with his or her gender—is no different from the discrimination directed against [the plaintiff] in *Price Waterhouse* who, in sex-stereotypical terms, did not act like a woman"); *Glenn* v. *Brumby,* 663 F.3d 1312 (11th Cir. 2011) (termination of a transgender employee on the basis of gender non-conformity is sex discrimination under Equal Protection Clause); *see also United States* v. *Se. Okla. State Univ.,* No. 5:15–cv–00324, 2015 WL 4606079, *2 (W.D. Okla. July 10, 2015); *Finkle* v. *Howard County, Md.,* 12 F. Supp. 3d 780 (D. Md. 2014); *Hart* v. *Lew,* 973 F. Supp. 2d 561 (D. Md. 2013). This principle—that discrimination against a transgender individual based on non-conformity to sex-based stereotypes is sex discrimination—has also been adopted under the Gender-Motivated Violence Act, *Schwenk* v. *Hartford,* 204 F.3d 1187, 1201–02 (9th Cir. 2000), and the Equal Credit Opportunity Act, *Rosa* v. *Park W. Bank & Trust Co.,* 214 F.3d 213, 215–16 (1st Cir. 2000). Other recent district court cases have held that discrimination on the basis of transgender identity is sex discrimination under the plain language of title VII. *See Fabian* v. *Hosp. of Cent. Conn.,* 2016 WL 1089178, *14 (D. Conn. Mar. 18, 2016); *Doe* v. *Arizona,* 2016 WL 1089743, *2 (D. Ariz. Mar. 21, 2016) (transgender status satisfied the "protected status" element of a gender discrimination claim).

[91] The religious organization commenter also asks OFCCP to clarify that RFRA forbids application of paragraphs 60–20.5(a) (regarding abortion coverage) and 60–20.5(b)(4) (regarding contraceptive coverage) to contractors with religious objections to those provisions. This comment is addressed separately in the relevant portions of the Section-by-Section Analysis, *infra.*

[92] 41 CFR 60–1.5(a)(5).

Ten comments from civil rights, women's, and LGBT organizations, and a credit union, including the comment that 70 organizations signed, urge OFCCP to add sexual orientation discrimination to the list of kinds of sex discrimination in paragraph 60–20.2(a).[94] OFCCP supports this view as a matter of policy. Federal agencies have taken an increasing number of actions to ensure that lesbian, gay, and bisexual individuals are protected from discrimination,[95] and court decisions have repeatedly made clear that individuals and couples deserve equal rights regardless of their sexual orientation.[96] OFCCP further notes that E.O. 13672 amended E.O. 11246 to prohibit employment discrimination by contractors based on sexual orientation.

Because E.O. 11246 expressly includes "sexual orientation" in the list of prohibited bases of discrimination, OFCCP finds it unnecessary to add the term "sexual orientation" to paragraph 60–20.2(a).[97] OFCCP further notes that this area of title VII law is still developing. In a recent Federal-sector decision, the EEOC—the lead Federal agency responsible for administering and enforcing title VII—offered a legal analysis and review of the title VII case law and its evolution, concluding that sexual orientation is inherently a "sex-based consideration" and that discrimination on the basis of sexual orientation is therefore prohibited by title VII as one form of sex discrimination.[98] As the EEOC noted in that case, in *Oncale* v. *Sundowner Offshore Services,* a unanimous Supreme Court stated that "statutory prohibitions often go beyond the principal evil [they were passed to combat] to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." [99] More than fifty years after the passage of the Civil Rights Act of 1964, the contours of the law governing sex discrimination in the workplace have changed significantly. Indeed, a number of courts have found that discrimination related to sexual orientation, particularly in the forms of sex stereotyping and same-sex harassment, is a form of sex discrimination.[100] OFCCP will continue to monitor the developing law on sexual orientation discrimination as sex discrimination under title VII. OFCCP will also consider issuing further guidance on this subject as appropriate.

In the proposed rule, paragraph 60–20.2(b) prohibited contractors from making distinctions based on sex in employment decisions unless sex is a BFOQ reasonably necessary to the normal operation of a contractor's particular business or enterprise. It also provided contractors and workers with a non-exhaustive list of scenarios that would constitute unlawful sex-based discriminatory practices. OFCCP received dozens of comments recommending revisions to the proposed examples from women's rights organizations, contractor and employer associations, consulting firms, law firms, organizations representing LGBT individuals, and individuals. The comments also suggest new examples for OFCCP to include in the final rule. As explained below, in consideration of the comments, OFCCP alters seven of the proposed paragraphs and adds three examples in the final rule.

The first three paragraphs in proposed paragraph 60–20.2(b) state that, unless sex is a BFOQ, it is unlawful disparate treatment (1) to make a distinction between married and unmarried persons that is not applied equally to both sexes; (2) to deny women with children an employment opportunity that is available to men with children; and (3) to fire, or otherwise treat adversely, unmarried women, but not unmarried men, who become parents. A contractor organization comments that these provisions appear to expand title VII and E.O. 11246 to protect against discrimination on the basis of marital or parental status and requests that OFCCP clarify whether these provisions extend protections on these bases. Neither the proposed paragraphs nor their corresponding provisions in the final rule create new protected bases under E.O. 11246. Rather, these examples illustrate situations when treating men and women differently would constitute discriminatory practices. These sex-based discriminatory practices occur in connection with marital or parental status, not because of marital or parental status. OFCCP retains these examples in the final rule, with two minor modifications: Paragraph (1) contains the phrase "men and women" instead of "both sexes," and proposed paragraph (3) is renumbered to (4).

One comment suggests changing proposed paragraphs 60–20.2(b)(2) and 60–20.2(b)(3) to be gender-neutral, recommending that OFCCP state that it is an unlawful discriminatory practice to deny "an employment opportunity to any employee with children based on the employee's gender" in paragraph (b)(2) and to fire "unmarried employees who become parents because of the gender of the employees" in paragraph (b)(3). OFCCP declines to make the suggested changes because these gender-specific examples were deliberately drafted to highlight common forms of sex discrimination. The use of gender-specific language in these examples does not override E.O. 11246 or this part to permit discrimination against male applicants or employees.

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[93] *See* OFCCP, Frequently Asked Questions: E.O. 13672 Final Rule, *available at http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html#Q9* (last accessed May 31, 2016).

[94] The commenters similarly urge OFCCP to add discrimination because of sexual orientation to § 60–20.7(b) and § 60–20.8(b), which, like § 60–20.2(a), list forms of sex discrimination.

[95] See, *e.g.,* 80 FR 9989 (February 25, 2015) (DOL amendment of the regulatory definition of spouse under the Family and Medical Leave Act (FMLA) so that eligible employees in legal same-sex marriages are treated the same way for FMLA purposes as employees in opposite-sex marriages); 45 CFR 155.120(c)(1)(ii) and 156.200(e) (HHS regulations barring discrimination on the basis of sexual orientation by Health Insurance Marketplaces and issuers offering qualified health plans); U.S. Citizenship and Immigration Services, Same Sex Marriages, *https://www.uscis.gov/family/same-sex-marriages* (last accessed May 13, 2016) (treating immigration visa petitions filed on behalf of same-sex spouses in the same manner as those filed on behalf of opposite-sex spouses).

[96] For example, in 1996, the Supreme Court struck down an amendment to the Colorado constitution that prohibited the State government from providing any legal protections to gay, lesbian, and bisexual individuals. *Romer* v. *Evans,* 517 U.S. 620 (1996). And, just last year, the Supreme Court ruled in *Obergefell* v. *Hodges,* 135 S. Ct. 2584 (2015), that states may not prohibit same-sex couples from marrying and must recognize the validity of same-sex couples' marriages. *See also United States* v. *Windsor,* 133 S. Ct. 2675 (2013) (declaring unconstitutional the federal Defense of Marriage Act's definition of "marriage" as only a legal union between a man and a woman); *Lawrence* v. *Texas,* 539 U.S. 558 (2003) (declaring unconstitutional a state statute criminalizing consensual same-sex sexual conduct).

[97] Similarly, OFCCP declines to add the term to § 60–20.7(b) or § 60–20.8(b).

[98] *Baldwin* v. *Dep't of Transp.,* EEOC Appeal No. 0120133080, slip op. at 6–7 (July 16, 2015). The EEOC relied on several analyses to reach this conclusion: A plain reading of the term "sex" in the statutory language, an associational analysis of discrimination based on "sex," and the gender stereotype analysis announced in *Price Waterhouse.*

[99] *Id.* at 13 (quoting *Oncale* v. *Sundowner Offshore Servs.,* 523 U.S. 75, 79 (1998) (alteration in original) (internal quotation marks omitted)).

[100] This recognition is reflected by paragraph 60–20.7(a)(2), which addresses harassment of a man because he is considered effeminate or insufficiently masculine, and paragraph 60–20.7(a)(3), which provides that adverse treatment of an employee or applicant who is in a relationship with a person of the same sex may be a form of sex-stereotyping discrimination, depending on the facts of the case. *See* cases cited in notes 163–167, infra.

In light of a comment regarding sex-based disparate treatment in permitting flexible work arrangements, OFCCP adds an example at paragraph 60–20.2(b)(3) of the final rule. The comment recommends that OFCCP add "flexible work arrangements" to § 60–20.6 (on fringe benefits). Employees increasingly see flexible work arrangements, such as flexible or alternative work schedules, as a valuable benefit,[101] and one commenter specifically states that providing time off and flexible workplace policies for men and women can help to combat caregiver stereotyping. Because of these policies' growing importance in the workplace, and the concern that contractors might treat men and women differently when authorizing such arrangements based on sex stereotypes, OFCCP agrees with the commenter that it would be useful to refer to flexible work arrangements in the final rule. Instead of doing so in § 60–20.6, however, OFCCP inserts the example—"treating men and women differently with regard to the availability of flexible work arrangements"—as new paragraph 60–20.2(b)(3) in the final rule.

After considering one comment that requests additional examples to highlight barriers that commonly impact women in a variety of sectors, OFCCP adds two more examples at paragraphs 60–20.2(b)(5) and 60–20.2(b)(6) in the final rule. The comment discusses several discriminatory hiring and promotion practices, including "applying different standards for hiring men and women" and "requiring more experience when promoting women as opposed to men." The commenter also describes several steering practices as examples of discrimination, including "steering or pigeonholing women into feminized sub-sectors of an industry, and keeping women in lower-paying jobs within sectors based on sex stereotyping and other disparate treatment." The final rule's new examples are intended to educate workers and contractors on how sex discrimination arises in today's workforce. In the final rule, subparagraphs (b)(5) and (b)(6) provide "applying different standards in hiring or promoting men and women on the basis of sex" and "steering women into lower-paying or less desirable jobs on the basis of sex" as examples of unlawful sex-based discriminatory practices.

OFCCP makes no substantive changes in the final rule to the examples in proposed paragraphs 60–20.2(b)(4), 60–20.2(b)(5), or 60–20.2(b)(6), although the last of these paragraphs is reworded from "based upon sex" to "on the basis of sex" for consistency of language in the final rule. Also, OFCCP renumbers those provisions to paragraphs (b)(7), (b)(8), and (b)(9) in the final rule.

Proposed paragraph 60–20.2(b)(7) provided "recruiting or advertising for individuals for certain jobs on the basis of sex, including through use of gender-specific terms for jobs (such as 'lineman')" as an example of an unlawful practice. OFCCP received four comments on this proposed paragraph, three of which criticize OFCCP for making the use of gender-specific job titles an example of disparate treatment because, as one comment puts it, "the requirement to use gender-neutral job titles is inconsistent with the way in which job titles are used by the federal government." Two comments from employer associations recommend clarification of the proposed paragraph, because, as written, it implies that using gender-specific job terms is *per se* an unlawful sex-based discriminatory practice. One comment points out that the EEOC permits gender-specific job titles in advertisements if they are clearly used as terms of art rather than as means for deterring applicants on the basis of sex. Several comments cite widespread use of certain gender-specific job titles and explain that contractors would incur costs to change their human resources systems and to negotiate new job titles with unions if they could not use certain gender-specific job titles; fully half of the member respondents to one industry association's survey think that there would be an impact if the use of gender-specific job titles were prohibited. One commenter suggests revising the example to make using gender-neutral job terms a best practice.

In response to these comments, OFCCP amends proposed paragraph 60–20.2(b)(7) (renumbered to paragraph 60–20.2(b)(10) in the final rule) by deleting the final clause: "including through use of gender-specific terms for jobs (such as 'lineman')." OFCCP will follow EEOC's policy guidance on Use of Sex-Referent Language in Employment Opportunity Advertising and Recruitment, which provides that use of sex-referent language in employment opportunity advertisements and other recruitment practices "is suspect but is not a *per se* violation of Title VII" and that "[w]here sex-referent language is used in conjunction with prominent language that clearly indicates the employer's intent to include applicants or prospective applicants of both sexes, no violation of Title VII will be found."[102] In addition, OFCCP incorporates the use of gender-neutral job terms, where such alternatives exist, as a best practice in an Appendix to the final rule.

In the NPRM, paragraph 60–20.2(b)(8) listed several ways in which women may be denied equal employment opportunity in career advancement, specifically if contractors distinguish on the basis of sex in "apprenticeship or other formal or informal training programs; in other opportunities such as networking, mentoring, sponsorship, individual development plans, rotational assignments, and succession planning programs; or in performance appraisals that may provide the basis of subsequent opportunities." Five commenters suggest adding "on-the-job training" to the list of opportunities mentioned in the proposed paragraph. OFCCP agrees that on-the-job training is an important type of opportunity that should not be omitted. Therefore, in the final rule, OFCCP adds "on-the-job training" to this example (renumbered as paragraph 60–20.2(b)(11)).

As discussed above in connection with § 60–20.1, five comments from employer associations and a law firm express concern that the examples in proposed paragraphs 60–20.2(b)(7) and (8) are inconsistent with contractors' affirmative action obligations in 41 CFR part 60–2, specifically 41 CFR 60–2.17(c), which requires contractors to correct identified impediments to equal employment opportunity by developing and executing action-oriented programs, attaining established goals and objectives, and using good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results (*e.g.*, targeting outreach or recruitment efforts to women who are underrepresented in the contractor's workforce). One of those comments also points out that the Uniform Guidelines on Employee Selection Procedures (UGESP), 41 CFR part 60–3, state that it may be necessary for contractors to use recruiting procedures designed to attract members of a particular sex. These concerns should be alleviated by § 60–20.1, which provides that the regulations at 41 CFR part 60–20 "are to be read in conjunction with the other regulations implementing Executive Order 11246." Nevertheless, as explained above, OFCCP includes new language in the final rule, in § 60–20.1, stating that under no circumstances will a contractor's good faith efforts to comply with the affirmative action requirements of 41 CFR part 60–2 be considered a violation of 41 CFR part 60–20. Contractors should not interpret 41 CFR part 60–20 as prohibiting them from using targeted efforts to recruit and advance women in order to comply with their affirmative action obligations.

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[101] Patricia Schaefer, "Flexible Work Arrangements: Employer Solutions to Common Problems" [no date], *available at http://www.businessknowhow.com/manage/flex-work.htm* (last accessed March 27, 2016).

[102] EEOC Notice No. 915–051, at 2 (April 16, 1990). While this document is not available on EEOC's Web site, a hard copy of it is available for public viewing in EEOC's library. A copy of this Notice is also available for public viewing in OFCCP's office.

The joint employer group comment also mentions more recent EEOC guidance on this point: An informal discussion letter that the Commission's Office of Legal Counsel issued in 2008 about the Commission's policy regarding the use of gender-specific job titles like "journeyman." The discussion letter stated that use of the term "journeyman" "probably would not implicate federal EEO laws to the extent that it is a term of art designating a particular skill level," but that "[t]he Commission has taken no position on whether 'journeyman' or 'journey level' is appropriate." The EEOC informs OFCCP that this informal discussion letter was not reviewed or voted on by the Commission and as such does not constitute an official opinion of the Commission.

Proposed paragraph 60–20.2(b)(9) stated that making any facilities or employment-related activities available only to members of one sex is an unlawful sex-based discriminatory practice, with the condition that if a contractor provides restrooms or changing facilities, the contractor must provide separate or single-user restrooms or changing facilities to assure privacy between the sexes. NPRM paragraph 60–20.2(b)(10) stated that a Federal contractor is discriminating based on sex if it denies employees access to the bathroom designated for the gender with which they identify. Comments on these provisions raise several issues.

First, nine comments on paragraph 60–20.2(b)(10) recommend revising the example to include other workplace facilities as well as restrooms, because the legal principle of equality and non-stigmatization underlying the example applies to all types of facilities. The proposed example in paragraph (b)(10) was not intended to limit transgender workers' access to other workplace facilities that are segregated by sex, as OFCCP agrees that the legal protection applies equally to these various types of facilities. Accordingly, OFCCP clarifies paragraph 60–20.2(b)(9) (renumbered paragraph 60–20.2(b)(12)), as well as paragraph 60–20.2(b)(10) (renumbered paragraph 60–20.2(b)(13)), to refer specifically to "restrooms, changing rooms, showers, or similar facilities."

Nine comments urge OFCCP to revise proposed paragraph 60–20.2(b)(9) to prohibit Federal contractors from segregating single-user restrooms based on sex. As a comment from an organization representing LGBT individuals explained, segregating single-user restrooms can negatively affect transgender workers by drawing "unwanted attention and scrutiny to their gender identity and expression, contributing to workplace harassment." In another comment, an employer association notes that gender-neutral restrooms give contractors more flexibility "given the rapidly changing social environment." Although provision of sex-neutral single-user facilities may well contribute to the prevention of discomfort and harassment for transgender employees, the example regarding sex-segregated single-user facilities must be read in conjunction with the final rule's example in 60–20.2(b)(13), which provides that denying transgender employees access to facilities designated for use by the gender with which they identify constitutes an unlawful sex-based discriminatory practice. Provision of sex-segregated single-user facilities is not sex discrimination as long as transgender employees may use the facilities consistent with their gender identity. OFCCP therefore declines to require that single-user restrooms be sex-neutral. However, recognizing the role that sex-neutral single-user facilities might play in preventing harassment of transgender employees, OFCCP adds to the Appendix a new paragraph that recommends that, as a best practice, contractors designate single-user restrooms, changing rooms, showers, and similar single-user facilities as sex-neutral.

In light of the comments discussed above, the final rule example (renumbered paragraph 60–20.2(b)(12)) is clarified to include "restrooms, changing rooms, showers, or similar facilities." With minor wording changes for clarity and brevity, the final rule also maintains OFCCP's proposal that if a contractor provides restrooms, changing rooms, showers, or similar facilities, the contractor must provide same-sex or single-user facilities.

OFCCP received 13 comments that support the requirement in proposed paragraph 60–20.2(b)(10) that Federal contractors provide employees with access to the bathrooms designated for the gender with which they identify. One comment underscores the effect of denying a transgender employee access to gender-appropriate restrooms: Such a denial "singles out and humiliates transgender workers, invites others to harass them, and places workers in the untenable position of either enduring this humiliation or avoiding restroom use at work altogether, risking serious negative health effects.[103]

Two comments oppose the NPRM paragraph (b)(10) requirement. These two opposition comments argue that the requirement is contrary to title VII — that, indeed, courts have held that the title VII prohibition on sex discrimination does not preclude the reservation of restrooms and locker rooms based on biological sex—and thus is beyond OFCCP's authority. The EEOC, however, recently held that an employer must permit access to restrooms and other facilities consistent with the employee's gender identity.[104] These decisions are consistent with the stated legal positions of the Departments of Justice and Education in the context of sex discrimination under title IX of the Education Amendments of 1972, 20 U.S.C. 1681(a) (title IX); [105] with the final rule interpreting the prohibition of sex discrimination under Section 1557 of the Patient Protection and Affordable Care Act (ACA) published by the Department of Health and Human Services; [106] with guidance documents issued by the Office of Personnel Management (OPM) regarding the employment of transgender individuals in the Federal workplace; [107] and with the Department's Occupational Safety and Health Administration's best practices relating to restroom access for transgender workers.[108] Most relevant, the proposed requirement is consistent with guidance that OFCCP issued in April 2015 relating to its Executive Order 13672 regulations, which expressly prohibit discrimination on the basis of gender identity.[109]

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[103] This comment, as well as others, cites Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation and its Impact on Transgender People's Lives*, J. PUB. MGMT. & SOC. POL'Y 19:65–80 (2013) (transgender individuals fearing denial of access in workplaces, among other public venues, avoid restroom use and commonly report physical symptoms or medical problems).

[104] *Lusardi* v. *Dep't of Army*, EEOC Appeal Doc. 0120133395, 2015 WL 1607756, at *8 (April 1, 2015); Additionally at least one Federal district court has recognized that such a claim is cognizable under title VII. *See, e.g., Hart* v. *Lew*, 973 F. Supp. 2d 561, 581–82 (D. Md. 2013) (recognizing a transgender plaintiff's title VII sex discrimination claim based in part on her employer's repeated denial of access to the women's restroom).

[105] U.S. Department of Justice and U.S. Department of Education, Dear Colleague Letter on Transgender Students (May 13, 2016), *available* at *http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf* (last accessed May 13, 2016); Brief of the United States as Amicus Curiae Supporting Plaintiff-Appellant, *G.G.* v. *Gloucester Cnty. Sch. Bd.*, Case No. 15–2056, 2015 WL 6585237 (4th Cir. October 28, 2015). The Fourth Circuit subsequently upheld the Department of Education's interpretation, *G.G.*, 2016 WL 1567467, at *8 (4th Cir. April 19, 2016), and denied the school board's petition for rehearing *en banc*, G.G., *slip op. at 2* (4th Cir. May 31, 2016).

[106] *See* U.S. Dep't of Health & Hum. Servs., Nondiscrimination in Health Programs and Activities: Final Rule, 81 FR 31376, 31388–31389, 31409 (May18, 2016) (HHS Nondiscrimination Final Rule).

[107] *See* OPM, Diversity and Inclusion Reference Materials: Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace, *available at http://www.opm.gov/policy-data-*

Further, this requirement is the logical outgrowth of the rulings that discrimination on the basis of gender identity is discrimination on the basis of sex. As one supportive comment explains, "denying employees access to sex-segregated facilities consistent with their gender identity amounts to treating them differently from non-transgender employees based on a perceived inconsistency between their gender identity and sex assigned at birth—in other words, based on being transgender, and therefore based on sex." Although E.O. 11246 does not expressly state that applicants and employees must be allowed to use the restroom that is designated for use by the gender with which they identify, OFCCP must "adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes" of the Executive Order.[110]

One of the comments that opposes the requirement also argues that allowing workers to use facilities according to the gender with which they identify would have an adverse impact on other employees who have a legitimate expectation of privacy in workplace restrooms and locker rooms. To begin with, this comment assumes that non-transgender employees will react to the presence of transgender employees based on the transgender employees' birth-assigned gender, rather than on the gender with which they identify in their daily interactions with co-workers. It also assumes that non-transgender employees' reactions will be based on fear, ignorance, or prejudice about transgender individuals. It is well established that private bias, prejudice, or fear "is not a legitimate basis for retaining the status quo."[111] Non-transgender co-workers' fears, ignorance, or prejudice about transgender individuals can no more be permitted to trump the right of transgender employees to equal workplace treatment than white co-workers' prejudices against sharing restrooms or drinking fountains with black employees would have been permitted to trump black employees' rights after the Executive Order and title VII went into effect 50 years ago.

One industry organization comments that few of its members have policies in place to address restroom access and asks OFCCP to provide more guidance to facilitate successful implementation of the final rule. OFCCP will provide general guidance and technical assistance to contractors as part of the final rule's implementation.

Paragraph 60–20.2(b)(11) in the proposed rule described the unlawful sex-based discriminatory practice of treating an employee adversely because "he or she has undergone, is undergoing, or is planning to undergo sex-reassignment surgery or other processes or procedures designed to facilitate the adoption of a sex or gender other than the individual's designated sex at birth." OFCCP received two comments suggesting that this paragraph's focus on "sex-reassignment surgery" is too narrow. The comments point out that some transgender individuals are unable or do not wish to undergo surgical or other types of medical procedures as part of their gender transition. To clarify that disparate treatment because of an employee's gender transition is sex discrimination under E.O. 11246 regardless of whether the transition involves medical treatment, one comment suggests revising the paragraph as follows (emphasis added to show suggested revision): "Treating an employee or applicant adversely *because she or he has adopted a gender identity other than the one designated at birth,* or because he or she is undergoing . . ." a gender transition. The suggested language is, however, tantamount to saying "because she or he is transgender"—which is already provided in paragraph 60–20.1(a). For that reason, OFCCP declines to revise this example as suggested.

Another comment suggests replacing the term "sex-reassignment surgery or other processes or procedures" with "transition-related health care" to encompass non-surgical treatment, such as hormone therapy and other medical services, as well as surgical treatment. OFCCP adopts this suggestion with slight modifications, changing the provision in the final rule (now at paragraph 60–20.2(b)(14)) by replacing the clause "because he or she has undergone, is undergoing, or is planning to undergo sex-reassignment surgery or other processes or procedures" with the clause "because he or she has received, is receiving, or is planning to receive transition-related medical services."

As noted *supra,* OFCCP adds, in an Appendix to the final rule, two examples of best practices to prevent sex-based disparate treatment. Section (1) of the Appendix recommends that contractors avoid the use of gender-specific job titles and use gender-neutral job alternatives where they are available. Section (2) recommends that contractors designate single-user restrooms and similar facilities sex-neutral. Neither of these practices is required.

Proposed paragraph 60–20.2(c) provided that employment policies or practices that have an adverse impact on the basis of sex, and are not job-related and consistent with business necessity, violate E.O. 11246 and the regulations at 41 CFR part 60–20. It also identified four examples of employment practices that may have an adverse impact on women, referencing case law as the source of those examples. OFCCP received 14 comments on these proposed provisions. In general, 12 of the comments support proposed paragraph 60–20.2(c), with 11 of them offering suggested changes. One comment opposes the proposed paragraph and recommends deleting it altogether; another generally opposes the paragraph with an overarching recommendation to make the examples less gender-specific.

Several supporting comments, highlighting the overlap between proposed paragraph 60–20.2(c) on disparate impact in general and proposed § 60–20.5, recommend that policies or practices that have a disparate impact on the basis of pregnancy—such as the practice of offering "light duty" only to employees with on-the-job injuries, thereby excluding employees affected by pregnancy, childbirth, or related medical conditions—be cross-referenced under paragraph 60–20.2(c). As

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oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/ (last accessed March 26, 2016).

[108] *See* Occupational Safety and Health Administration, U.S. Department of Labor, Publications: Best Practices: A Guide to Restroom Access for Transgender Workers, *available at https://www.osha.gov/Publications/OSHA3795.pdf* (last accessed March 26, 2016).

[109] *See* OFCCP, Frequently Asked Questions: EO 13672 Final Rule ("How is restroom access affected by the Final Rule?"), *available at http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html#Q35* (last accessed March 25, 2016).

[110] E.O. 11246, sec. 201.

[111] *Latta* v. *Otter,* 771 F.3d 456, 470–71 (9th Cir. 2014); *see also Palmore* v. *Sidoti,* 466 U.S. 429, 433 (1984) ("Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect."); *Lusardi,* 2015 WL 1607756, at *9, ("supervisory or co-worker confusion or anxiety cannot justify discriminatory terms and conditions of employment . . . [a]llowing the preferences of co-workers to determine whether sex discrimination is valid reinforces the very stereotypes and prejudices that Title VII intended to overcome").

paragraph 60–20.2(c) states, disparate-impact analysis applies to all "[e]mployment policies or practices," including those that affect pregnancy, childbirth, or related medical conditions, and proposed paragraph 60–20.5, which addresses pregnancy, childbirth, or related medical conditions, includes, in paragraph 20.5(c)(2), an example of the application of disparate-impact analysis to the provision of leave. OFCCP believes it is therefore unnecessary to add an example of a situation in which a contractor's policies or practices have an unjustified disparate impact on pregnancy to proposed paragraph 60–20.2(c). Instead, the final rule revises § 60–20.5 to apply disparate-impact analysis to contractors' failure to accommodate pregnancy. This revision is discussed in connection with § 60–20.5, *infra*.

One comment recommends that OFCCP revise the example in proposed paragraph 60–20.2(c)(1) by removing the word "minimum" from "[m]inimum height and/or weight qualifications." OFCCP agrees that the word "minimum" is unnecessary and deletes it from the example in the final rule. The same comment suggests making this example, as well as the example in proposed paragraph 60–20.2(c)(2), gender-neutral. For example, the commenter suggests replacing the phrase "negatively impact women substantially more than men" with "negatively impact one gender more than the other" in proposed paragraph 60–20.2(c)(1). OFCCP declines to make these examples gender-neutral. As noted earlier, these examples are deliberately gender-specific to highlight common types of sex discrimination.

Five comments recommend that OFCCP insert the language "including in Notices of Openings for Registered Apprenticeship Programs," in the example proposed in paragraph 60–20.2(c)(2). The purpose of this insertion would be to clarify that strength requirements for apprenticeship programs may have a disparate impact on women and be unlawful if the requirements actually exceed what is necessary to perform the job. OFCCP recognizes that job opening notices stating selection criteria such as strength requirements may have a chilling effect on women applicants; if the selection criteria have a disparate impact, unless the criteria are job-related and consistent with business necessity, they may violate E.O. 11246 and 41 CFR part 60–20. Because application of this principle to selection procedures for apprenticeship programs is stated clearly in the final rule, at paragraph 60–20.2(c)(4), OFCCP declines to add another reference to apprenticeship programs to paragraph 60–20.2(c)(2).

Two comments also recommend that OFCCP broaden the first phrase in proposed paragraph 60–20.2(c)(2) by making the example less specific to "strength" requirements. One comment suggests use of the phrase "physical requirements"; the other, "physical agility tests," noting that such physical agility tests have served to exclude women from such sectors as construction, industrial work, transportation, and law enforcement and that those tests are frequently not necessary to the performance of the job in question. In light of these two comments, OFCCP alters this example to include any type of physical requirement that may have a discriminatory impact based on sex. Instead of being limited to strength, the example in the final rule encompasses "[s]trength, agility, or other physical requirements."

One comment disputes whether the example in proposed paragraph 60–20.2(c)(3) is factual or based on a stereotype that women require the use of restrooms more than men. As indicated in the NPRM, the proposed example—on employer policies effectively prohibiting restroom usage—reflects the fact scenario of *Johnson* v. *AK Steel Corp.*, No. 1:07-cv-291, 2008 WL 2184230 (S.D. Ohio May 23, 2008), in which the court found that the employer's policy requiring employees to urinate off the back of a crane (*i.e.*, not allowing restroom breaks) was evidence of a *prima facie* case of disparate-impact discrimination against women. Earlier, the Sixth Circuit similarly held that the "failure to furnish adequate and sanitary facilities to female workers who have been shown to suffer identifiable health risks" had a significant disparate impact on women.[112] As mentioned above in the Reasons for Promulgating this New Regulation section of the preamble, in 2014 OFCCP found a construction contractor to have violated the Executive Order when it failed to provide restroom facilities to female carpenters.[113]

To address the issue of whether women require the use of the restroom more than men, OFCCP surveyed medical literature in this area. While there was evidence supporting the position OFCCP took in the NPRM, the overall results were inconclusive. While some courts have recognized that an employer's policies relating to use of sanitary facilities may have a disparate impact against women, OFCCP is sensitive to this commenter's concern that such an example "perpetuates an unproven stereotype." Accordingly, OFCCP deletes this proposed example from the text of the final rule. However, in certain circumstances, consistent with other courts addressing the issue under title VII, disparate-impact claims based on restroom facility access may be cognizable under the Executive Order.

Five comments recommend broadening the example in proposed paragraph 60–20.2(c)(4) by adding "physical tests" and "interviews" as selection criteria that may have an adverse impact on women seeking to gain entrance to an apprenticeship program. As several of these comments note, some apprenticeship programs utilize physical tests and interview scoring methods that disproportionately exclude women. Because the final rule already addresses "physical requirements" that may have an adverse impact on women at paragraph 60–20.2(c)(2), OFCCP declines to add "physical tests" to the example in proposed paragraph (c)(4). However, OFCCP adds "interview, or other selection procedure" to this example in the final rule, at paragraph 60–20.2(c)(3). As a result of expanding the proposed language to include "performance on a written test, interview, or other selection procedure," OFCCP rephrases the remaining text in final rule paragraph (c)(3) from "the validity of the test" to "the validity of the selection procedure consistent with the Uniform Guidelines on Employee Selection Procedures." OFCCP also expands paragraph (c)(3) to encompass "entry into an apprenticeship *or training* program" (emphasis added) as a disparate-impact corollary to the example at paragraph 60–20.2(b)(11) in the final rule addressing disparate treatment of women in formal and informal training programs.

Some supporting comments also recommend that OFCCP provide more examples of disparate impact in the contexts of compensation, leave, and the

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[112] *Lynch* v. *Freeman*, 817 F.2d 380, 388 (6th Cir. 1987). In *Lynch*, the district court found that the plaintiff introduced "credible medical expert testimony to demonstrate that women are more vulnerable to urinary tract infections than are men" but rejected her disparate-impact case. *Id.* The appeals court reversed, holding that the plaintiff had made out a *prima facie* case of disparate-impact discrimination. The court found that "all females were placed at a higher risk of urinary tract infections by using unsanitary portable toilets or by avoiding the use of such toilets and holding their urine" and that men were not exposed to the same risks from using the toilets because of "anatomical differences between the sexes." *Id.*

[113] *See supra* note 41 and accompanying text.

"lack of appropriate physical facilities in the workplace." OFCCP declines to add particular examples of disparate-impact discrimination in these contexts because the final rule contains separate provisions that discuss compensation, leave, physical facilities, and entry into training programs, at paragraphs 60–20.4(d), 60–20.5(c)(2), 60–20.5(d)(3), and 60–20.2(c)(3), respectively. However, OFCCP inserts one new example in the final rule, at paragraph 60–20.2(c)(4), based on one comment's specific suggestion to include an example of disparate impact due to the policy or practice of relying on "short-lists" and "word-of-mouth" or "tap-on-the-shoulder" recruiting.

Finally, one comment opposes proposed paragraph 60–20.2(c) in its entirety, stating that it is unnecessary because the prohibition against disparate impact already exists in 41 CFR 60–2.14(b)(4), 41 CFR 60–1.20(a), and 41 CFR 60–3. 41 CFR part 60–20 is intended to supplement contractors' other obligations in 41 CFR chapter 60. Additionally, in the last four decades, disparate impact analysis has been applied to new circumstances under title VII, and numerous comments commend OFCCP for updating part 60–20 to reflect current law. For these reasons, OFCCP opts to retain proposed paragraph 60–20.2(c).

Section 60–20.3 Sex as a Bona Fide Occupational Qualification

Proposed § 60–20.3, entitled "Sex as a *bona fide* occupational qualification," consolidates in one provision the various references to the BFOQ defense available to employers in the Sex Discrimination Guidelines. It adopts the BFOQ language set forth in title VII, 42 U.S.C. 2000e–2(e).

After considering the comments it received, OFCCP adopts § 60–20.3 as proposed. One comment, from a contractor association, supports the proposed changes to § 60–20.3 as an approach that simplifies the regulations and makes obligations under 41 CFR part 60–20 easier to understand.

Four comments recommend that OFCCP explain in plain language that factors other than sex must be business-related and actually account for the discrimination that occurred. OFCCP declines to provide this explanation in § 60–20.3 of the final rule because, as a matter of practice, OFCCP already follows these title VII principles.

Seven comments recommend that language be added to § 60–20.3 to make clear that when sex is a valid BFOQ, transgender employees should be treated in a manner consistent with their gender identity. Commenters cited the Los Angeles County Sheriff's Department (LASD) as an example of an employer applying a sex-based BFOQ in a way that meets its legitimate needs without discriminating against transgender workers: LASD's Transgender Employee Guide states that transgender employees will be "classified and assigned in a manner consistent with their gender identity, not their sex assigned at birth" for sex-segregated job assignments. OFCCP agrees that, where otherwise valid, a sex-based BFOQ may not be applied in a discriminatory manner to transgender workers. Because case law on application of sex discrimination principles, including those relating to the BFOQ exception, to transgender discrimination is developing, OFCCP declines to incorporate a statement about application of the BFOQ exception to transgender workers, but it will continue to follow relevant title VII case law and administrative interpretations.

Finally, one women's rights organization encourages OFCCP to provide additional guidance for contractors in the form of specific examples of valid and invalid BFOQ defenses in proposed § 60–20.3. OFCCP follows title VII principles in assessing a contractor's use of the BFOQ defense—including the EEOC's view that the BFOQ exception should be "interpreted narrowly"[114] and its explanation that the exception applies "where it is necessary for the purpose of authenticity or genuineness."[115] OFCCP declines to add examples to the final rule.

Section 60–20.4 Discriminatory Compensation

Proposed section 60–20.4 covers sex discrimination in compensation. The section is organized into paragraphs describing various types of discriminatory compensation practices under E.O. 11246. This portion of the Section-by-Section Analysis first addresses comments on the entire section generally, followed by comments specifically addressing each paragraph.

A law firm comments that proposed § 60–20.4 is unnecessary and redundant, because the existing regulation at paragraph 60–2.17(b)(3) requires contractors to evaluate their compensation systems to determine whether there are any sex-, national origin-, or race-based disparities. The commenter asserts that the section does not change contractors' obligations with regard to assessing their compensation systems or the compliance evaluation procedures that OFCCP uses to assess compliance and that it therefore has no purpose. OFCCP concludes that the section should remain in the final rule. The section does not create new obligations for contractors, but it does provide specific examples based in title VII law to help contractors assess their compliance. OFCCP's rulemaking authority is not constrained to issuing regulations that create new obligations for contractors or that necessitate new enforcement mechanisms to assess contractor compliance. Since § 60–20.4 provides more clarity regarding the types of practices that can form the basis of a compensation discrimination violation of E.O. 11246, it should not be eliminated from the final rule.

The joint employer organization comment also argues that proposed section 60–20.4 is unnecessary, on the ground that proposed paragraph 60–20.2(b) on disparate treatment already generally states that a "contractor may not make any distinction based on sex in recruitment, hiring, firing, promotion, *compensation*, hours, job assignments, training, benefits, or other terms, conditions, or privileges of employment" (emphasis added). The comment asserts that proposed § 60–20.4 only reiterates that contractors may not discriminate on the basis of sex in compensation. OFCCP disagrees that proposed § 60–20.4 is redundant. Paragraph 60–20.2(b) merely states that contractors may not discriminate on the basis of sex when making employment decisions, including in compensation. Section 60–20.4 elaborates on this basic principle, describing the various types of practices that can result in sex-based pay discrimination under E.O. 11246, in accordance with title VII law. As stated above, this section provides added clarity about contractors' obligations in this area, and OFCCP retains it in the final rule.

Another law firm commenter expresses concern that proposed § 60–20.4 will impact the self-evaluation of compensation systems that contractors are already required to conduct pursuant to the existing regulation at paragraph 60–2.17(b)(3). As noted previously, paragraph 60–2.17(b)(3) requires contractors to evaluate their compensation systems to determine whether there are sex-, race-, or national origin-based disparities. Because the regulation does not specify any particular analysis method that contractors must follow to comply with this regulation, contractors have substantial discretion to decide how to evaluate their compensation systems. Specifically, the commenter cites the statement in the preamble of the NPRM that proposed paragraphs 60–20.4(a), (b), and (c) were intended "to provide more guidance to contractors about the kinds of practices that they should undertake to assess their compliance." The commenter is concerned that this statement might mean that proposed paragraph 60–20.4 will establish new, mandatory assessment techniques for the self-evaluation of compensation and asks that OFCCP clarify its intent on this issue. OFCCP appreciates the opportunity to clarify that § 60–20.4 does not create any new obligations with regard to the self-evaluation of compensation systems required by paragraph 60–2.17(b)(3). Each contractor may continue to choose the assessment method that best fits with its workforce and compensation practices. To the extent that § 60–20.4 provides guidance regarding various forms of compensation discrimination, it may inform contractors' efforts to identify sex-based disparities in compensation, as well as the policies or practices that are causing them.[116] Fully understanding the source as well as the scope of the problem is important because sex-, race-, and national origin-based disparities found as part of a self-evaluation must be corrected pursuant to paragraph 60–2.17(c).

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[114] EEOC Guidelines on Discrimination Because of Sex, *supra* note 64 (§ 1604.2, provision on BFOQ defense).

[115] *Id.* at § 1604.2(2).

Many commenters suggest that § 60–20.4 should be revised to clarify that punitive pay secrecy policies that interfere with enforcement of wage discrimination protections violate antidiscrimination law. OFCCP declines to add this prohibition to § 60–20.4, because pay secrecy policies are already addressed in OFCCP's regulations.[117]

Many of the same commenters also suggest that OFCCP should encourage contractors to implement transparent pay practices and clear methodologies for setting pay. As OFCCP recognized in the preamble to the NPRM on prohibiting pay secrecy policies, research shows that workers without access to compensation information are less satisfied and less productive.[118] Greater transparency about compensation and how it is determined can translate into real benefits for employers, including decreased turnover and higher productivity. Additionally, as mentioned above, greater pay transparency may help prevent or resolve sex-based compensation discrimination by allowing workers to become informed and better able to exercise their right to fair pay by filing a complaint. While OFCCP recognizes the potential value of greater pay transparency to contractors and employees, specifically advising employers to develop more transparent pay practices is beyond the scope of the current rulemaking.

Another commenter asserts that OFCCP's approach to pattern-or-practice pay discrimination claims is inconsistent with title VII case law, including *Wal-Mart Stores, Inc.* v. *Dukes,* 131 S. Ct. 2541 (2011). This comment is outside the scope of the proposed rule, which makes no changes to OFCCP's approach to pattern-or-practice pay discrimination claims. Moreover, the Supreme Court's decision in *Wal-Mart* was based on the private plaintiffs' failure to satisfy procedural requirements under the Federal Rules of Civil Procedure (FRCP) regarding class-action lawsuits. Unlike private plaintiffs, who must prevail on class-certification motions to bring suit on behalf of others, OFCCP is a governmental agency that is authorized to act in the public's interest to remedy discrimination. It is not subject to the limitations and requirements of class certification under the FRCP.[119] Nonetheless, to the extent that *Wal-Mart* addressed principles of title VII law that apply outside the class-certification context, OFCCP follows those principles in its enforcement of E.O. 11246.

Three comments suggest that the term "equal wages" in the introductory paragraph to proposed § 60–20.4 is misleading and does not accurately state the law under title VII and E.O. 11246. Specifically, the second sentence in proposed § 60–20.4 states that "Contractors may not engage in any employment practice that *denies equal wages,* benefits, or other forms of compensation . . . ." (emphasis added). All three commenters point out that title VII prohibits discrimination in compensation but does not require employers to provide equal pay for all employees, as is implied by the term "equal wages." One commenter notes that the term "equal wages" may be especially confusing to contractors because it could be interpreted as a reference to the Equal Pay Act, which OFCCP does not enforce. OFCCP agrees that the term "equal wages" may create confusion about the legal framework relevant to sex-based compensation discrimination under E.O. 11246. Accordingly, OFCCP revises the second sentence of § 60–20.4 in the final rule to read as follows: "Contractors may not engage in any employment practice that *discriminates in wages,* benefits, or any other forms of compensation . . . ." (emphasis added).

Proposed paragraph 60–20.4(a) prohibits contractors from paying "different compensation to similarly situated employees on the basis of sex." It notes that the determination of which employees are similarly situated is case specific and lists the following factors as among those potentially relevant to determining similarity: Tasks performed, skills, effort, levels of responsibility, working conditions, job difficulty, minimum qualifications, and other objective factors. Lastly, it states that in some cases, employees are similarly situated where they are comparable on some of these factors, even if they are not similar on others.

One commenter states that proposed paragraph 60–20.4(a) is inconsistent with title VII case law governing whether employees are similarly situated. OFCCP disagrees with this characterization of proposed paragraph 60–20.4(a), which as described above states that the determination of similarly situated employees is case specific and lists several examples of potentially relevant factors. Under the proposed provision, OFCCP treats employees as similarly situated only if they are comparable for purposes of the contractor's pay practices on factors relevant to the compensation issues presented. The proposed provision is therefore consistent with title VII's flexible, fact-specific approach to proof.

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[116] If EEOC's Proposed Revision of the Employer Information Report (EEO–1) is adopted, it may also provide assistance to contractors that have 100 or more employees as they attempt to identify sex-based disparities in compensation and the policies or practices that cause such disparities. *See* EEOC, Agency Information Collection Activities: Proposed Revision of the Employer Information Report (EEO–1) and Comment Request, 81 FR 5113, 5115 (February 1, 2016) ("EEOC and OFCCP anticipate that the process of reporting pay data may encourage employers to self-monitor and comply voluntarily if they uncover pay inequities."). In any event, contractors remain free to choose the assessment method that best fits with their workforces and compensation practices to accomplish the self-evaluation of compensation systems required by paragraph 60–2.17(b)(3).

[117] *See* OFCCP, Government Contractors, Prohibitions Against Pay Secrecy Policies and Actions, 80 FR 54934 (September 11, 2015).

[118] 79 FR at 55715 (September 17, 2014).

[119] *See OFCCP* v. *Bank of Am.,* 1997–OFC–16, Order Den. Def.'s Req. to Strike the Pl.'s Expert Report, & for Recons. of Denial of Req. for Issuance of Subpoenas (ALJ November 2, 2011). *Cf. Gen. Tel. Co. of the Nw., Inc.* v. *Equal Emp't Opportunity Comm'n,* 446 U.S. 318, 334 n.16 (1980) ("[T]he nature of the EEOC's enforcement action is such that it is not properly characterized as a 'class action' subject to the procedural requirements of Rule 23."); *Dep't of Fair Emp't & Hous.* v. *Law Sch. Admission Council, Inc.,* 941 F. Supp. 2d 1159, 1166 (N.D. Cal. 2013) ("The principle that has emerged is that where a governmental agency is authorized to act in the public's interest to obtain broad relief . . . and the authorizing statute confers such power without reference to class certification, Rule 23 may not apply.").

The commenter also objects to proposed § 60–20.4(a) as contrary to OFCCP's 2006 Systemic Compensation Discrimination Standards. However, as the commenter acknowledges, OFCCP rescinded those standards in February 2013.[120]

Several commenters express concern that the definition of "similarly situated" in proposed paragraph 60–20.4(a) is too broad and allows the agency too much flexibility in determining which employees to compare in a given case. One commenter states that it does not provide specific enough guidance to contractors and that it permits the agency to compare employees "who are assigned to different jobs at different levels, in different units, and at different geographic locations." Another commenter expresses concern about the statement in the last sentence of paragraph 60–20.4(a) that in some cases employees may be similarly situated if they are comparable on some but not all of the factors listed. The commenter interprets that sentence to mean that OFCCP will compare employees even though they are not similarly situated in all relevant respects, which is not supported by title VII case law.

In response to these comments, OFCCP clarifies the principles underlying the definition of "similarly situated" set out in proposed paragraph 60–20.4(a). The definition used in the final rule is identical to the definition provided in OFCCP's Directive 307, describing procedures for reviewing contractor compensation systems and practices, and the agency's rescission of the compensation guidance documents issued in 2006.[121] The definition is flexible because title VII law does not provide a static list of factors for determining which employees are similarly situated that can be applied in every case. Under the title VII discrimination framework, comparing employees to determine whether discrimination has occurred is highly case specific. When assessing compensation during a compliance evaluation, OFCCP inquires about the compensation systems and practices of the particular contractor under review and tailors its analyses and investigative approach to the facts of the case. This helps ensure that its compensation analyses compare employees who are in fact similarly situated.

Many of the commenters that express concern about the flexibility of the similarly situated standard set out in proposed paragraph 60–20.4(a) also question whether the paragraph indicates that OFCCP will use a "comparable worth" approach when assessing employee compensation—*i.e.*, whether the agency will compare jobs because they have comparable worth even if they do not involve similar duties or working conditions. OFCCP does not conduct comparable worth assessments when reviewing contractors' compensation systems. OFCCP enforces the Executive Orders prohibition against compensation discrimination in line with title VII principles.[122] As noted above, this requires a case-by-case assessment of the relevant factors to determine similarly situated employees. Depending on the unique pay systems and policies of a given contractor, this may involve comparing employees in similar, but not necessarily identical, jobs, or employees who are similar in terms of level, function, or other classification relevant to the contractor's workforce. Further, a specific job or position may not be the only relevant consideration, particularly in a systemic case. For example, a bonus pool or commission formula may apply to a group of individuals who hold multiple positions, and in an assessment of pay practices at hire, a key point of comparison may be qualifications at entry. OFCCP adheres to title VII case law on compensation discrimination as it develops and does not endorse or advocate for any particular method for contractors to ensure nondiscrimination in compensation.

Another commenter suggests adding job title, seniority, and education to the list of factors that may be relevant to the determination of which employees are similarly situated. While one or more of these three factors may be relevant to the determination of which employees are similarly situated in a particular case, OFCCP declines to add them to paragraph 60–20.4(a) in the final rule. The list of potentially relevant factors itemized in the third sentence of proposed paragraph 60–20.4(a) is non-exhaustive, due to the highly case-specific nature of the similarly situated inquiry. OFCCP will continue to consider and account for the factors that a particular contractor uses to determine compensation, on a case-by-case basis and in line with title VII principles.

Two organizations representing women in construction suggest that OFCCP add "work hours" to the list of factors that may be relevant to a similarly situated determination as a way of addressing the discrimination in the number of hours assigned that women in construction often face. OFCCP declines to add "work hours" to paragraph 60–20.4(a) because the practice of assigning fewer work hours on the basis of sex is independently prohibited by paragraph 60–20.4(c). Paragraph 60–20.4(c) states that "[c]ontractors may not provide or deny earnings opportunities because of sex, for example, by denying women equal opportunity to obtain regular and/or overtime hours." Additionally, identifying work hours as a possible factor for making the similarly situated determination may limit OFCCP's ability to compare women to their male counterparts who work more hours but have similar qualifications.

A number of commenters recommend that OFCCP add examples of pay factors—such as market forces and prior salary—that may be discriminatory. A related comment on proposed paragraph 60–20.4(d) states that the definition of "compensation practice" in that paragraph is unclear and argues that it would be improper for OFCCP to interpret the phrase to include a contractor's determination to pay a particular applicant a higher wage based on market forces (*e.g.*, matching a competitor's offer) and thus to conclude that the practice is discriminatory. As the comments themselves acknowledge, the case law about what factors are legitimate for the purposes of setting pay is unsettled. Thus, OFCCP declines to adopt a *per se* rule permitting or prohibiting the use of market forces or prior salaries in setting compensation. As with any other compensation practice, OFCCP will review the employer's practice on a case-by-case basis to determine whether there is discriminatory treatment or discriminatory impact based on sex. Each claim of pay discrimination turns on the specific facts of the case.

Paragraph 60–20.4(b) prohibits contractors from granting or denying higher-paying wage rates, salaries, positions, job classifications, work assignments, shifts, development opportunities, or other opportunities on the basis of sex. It also prohibits contractors from granting or denying training, work assignments, or other opportunities that may lead to advancement to higher-paying positions on the basis of sex.

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[120] *See* Interpreting Nondiscrimination Requirements of Executive Order 11246 with Respect to Systemic Compensation Discrimination and Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance with Nondiscrimination Requirements of Executive Order 11246 with Respect to Systemic Compensation Discrimination: Notice of Final Rescission, 78 FR 13508 (February 28, 2013) (Notice of Rescission).

[121] OFCCP Directive 307 (renumbered on September 16, 2013, as 2013–03), Procedures for Reviewing Contractor Compensation Systems and Practices (February 28, 2013); Notice of Rescission.

[122] *Id.*

A women's rights group suggests that the preamble to the final rule should point out that steering on the basis of sex in assigning workers to part-time and full-time jobs could be sex discrimination in violation of this rule. OFCCP agrees that such a practice could violate this part. For example, it would likely constitute discrimination if a contractor steered women into part-time jobs with a lower wage rate than similar full-time jobs assigned to men, based on a sex stereotype that women prefer to work fewer hours than men. Even if the wage rates for similar part-time and full-time jobs are the same or very similar, steering women into part-time jobs could also be discriminatory—not only because women would be assigned fewer hours but also if benefits such as health insurance were granted only to full-time workers or if opportunities for promotion or training were disproportionately or solely available to full-time workers.

Another commenter, a construction contractor, expresses concern that OFCCP may attribute differences in pay to discrimination rather than to legitimate differences in experience or skill. The commenter explains that the construction industry has historically been male dominated. As a result, men in this industry often have higher-paying positions due to their experience, and women tend to apply for and occupy lower-paying administrative positions. The commenter is concerned that OFCCP will not account for such employee characteristics and preferences that are beyond the control of the contractor. OFCCP considers legitimate, nondiscriminatory factors that may explain differences in employee compensation when conducting its analyses.[123] Relevant factors may include a particular skill or attribute; education; work experience; the position, level, or function; tenure in a position; and performance ratings. OFCCP considers whether a factor accounts for differences in pay on a case-by-case basis, by determining whether the factor is actually used by the contractor to determine compensation and whether the factor has been applied consistently without regard to sex or another protected basis. Whether any particular factor that explains differences in pay is "tainted" by discrimination, or should be included or excluded as a legitimate explanation for sex-based disparities, will depend on case-specific evidence.

Two comments suggest that OFCCP add the term "apprenticeships" to paragraph 60–20.4(b) in order to make clear that sex-based distinctions in granting apprenticeships are prohibited. OFCCP agrees that apprenticeships provide valuable opportunities for workers to learn new skills and advance and that access to apprenticeships is crucial for women in certain industries like construction. Accordingly, OFCCP adds the term "apprenticeships" to the second sentence of paragraph 60–20.4(b) in the final rule.

Proposed paragraph 60–20.4(d) prohibits compensation practices that have an unjustified sex-based disparate impact, stating that contractors are prohibited from implementing compensation practices, including performance systems, that have an adverse impact on the basis of sex and are not shown to be job-related and consistent with business necessity.

One commenter argues that disparate impact cannot be a viable mode of analysis in pay-discrimination cases because Section 703(h) of title VII, 42 U.S.C. 2000e–2(h), forecloses the possibility of a neutral policy's being the basis of a pay discrimination claim. However, Section 703(h), by its terms, provides a defense only where an employer applies different standards of compensation "pursuant to . . . a system which measures earnings by quantity or quality of production or to employees who work in different locations," and where those differences are not the result of intentional discrimination. This provision of title VII is entirely consistent with OFCCP's case-by-case approach in assessing relevant factors that may explain differences in compensation.

The same commenter further questions the characterization of *Lewis* v. *City of Chicago*, 560 U.S. 205, 212 (2010), in footnote 71 of the NPRM, which stated that "[t]itle VII places no limit on the types of employment practices that may be challenged under a disparate impact analysis." To clarify, in footnote 71 of the NPRM, OFCCP referred to the Supreme Court's statement in *Lewis* that title VII does not define "employment practice" for purposes of establishing a disparate-impact claim. However, to prevent confusion, OFCCP does not include footnote 71 of the NPRM in the final rule. Paragraph 60–20.4(d) should be read consistently with established title VII principles.

Another commenter requests clarification of whether paragraph 60–20.4(d) would as a general rule require contractors to validate their performance review systems pursuant to UGESP. The commenter notes that not all performance review systems are tied to annual merit increases, bonuses, or other forms of compensation. The commenter also alludes to the significant financial burden that contractors would face if required to validate performance review systems and points out that this cost was not estimated as part of the burden calculation in the NPRM. As proposed, paragraph 60–20.4(d) did not necessarily require contractors to validate their performance review systems pursuant to UGESP. UGESP applies to tests and other selection procedures that employers use as bases for employment decisions. Thus, a performance review system that a contractor uses as a basis for promoting, demoting, referring, or retaining employees is subject to UGESP, which may require it to be validated if it has an adverse impact on the basis of sex, race, or national origin. In that respect, proposed paragraph 60–20.4(d) did not require anything beyond what UGESP already requires. To prevent confusion, however, OFCCP revises final rule paragraph 60–20.4(d) to remove the specific reference to performance review systems. In any event, to the extent that a particular performance review system is not a "selection procedure" and, thus, not subject to UGESP, a contractor that uses such a system to make compensation decisions must show that the system is job-related and consistent with business necessity if it has an adverse impact on the basis of sex.

Proposed paragraph 20.4(e) provided that a contractor violates the rule any time it pays wages, benefits, or other compensation that is the result in whole or in part of the application of any discriminatory compensation decision or other practice described in that section. One commenter, arguing that the FPA extends the statute of limitations for compensation discrimination claims but not for other discrete employment actions such as hiring, initial job assignments, and promotion decisions, requests that OFCCP modify the language in paragraph 60–20.4(e) to exclude discrete employment actions like job assignment and promotion. OFCCP declines to do so, for the reasons below.

OFCCP first notes that a substantial majority of its enforcement actions under E.O. 11246 arise out of compliance evaluations, which are governed by 41 CFR 60–1.26. Both Federal and administrative courts have held that § 60–1.26 contains no statute of limitations.[124] Because OFCCP enforcement actions arising from compliance evaluations contain no statute of limitations, the commenter's discussion of the FPA and subsequent case law is not applicable to those compliance evaluations.

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[123] OFCCP, Frequently Asked Questions: OFCCP Procedures for Reviewing Contractor Compensation Systems and Practices ("How will 'factors' that the contractor asserts are relevant to compensation be considered and analyzed by OFCCP?"), *available at http://www.dol.gov/ofccp/regs/compliance/faqs/CompGuidance_faq.htm#Q27 (last accessed March 27, 2016).*

OFCCP enforcement actions arising from individual complaint investigations, on the other hand, are governed by 41 CFR 60–1.21, which does contain a 180-day statute of limitations. Accordingly, OFCCP enforces its complaint-based claims under § 60–20.4(e) in accordance with the FPA. The FPA states that "an unlawful employment practice" occurs

> when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.[125]

The FPA's purpose

> was to reinstate the law regarding the timeliness of pay compensation claims as it was prior to [*Ledbetter* v. *Goodyear Tire and Rubber Co, Inc.*, 550 U.S. 618 (2007)], which Congress believed undermined statutory protections against compensation discrimination by unduly restricting the time period in which victims could challenge and recover for discriminatory compensation decisions.[126]

As another court explained,

> Thus, pursuant to the FPA, each paycheck that stems from a discriminatory compensation decision or pay structure is a tainted, independent employment action that commences the administrative statute of limitations.[127]

With regard to the commenter's specific suggestion, OFCCP declines to exclude discrete employment actions like job assignment and promotion from paragraph 60–20.4(e). While some courts have refused to revive failure-to-promote and other employment actions by application of the FPA, whether a particular claim can be revived depends on whether it is sufficiently tied to an allegation of discriminatory pay, which turns on a factual inquiry. For example, one Federal court held that a failure to promote was sufficiently tied to the plaintiff's claim of discriminatory compensation practices to permit application of the FPA to toll the statute of limitations.[128] OFCCP will determine whether a particular claim of compensation discrimination satisfies the FPA's standard of "discriminatory compensation decision or other practice" on a case-by-case basis, following title VII law as it develops.

OFCCP does make a revision to paragraph 60–20.4(e). It deletes the last four words of proposed paragraph 60–20.4(e), "described in this section," so that the final rule reads: "A contractor will be in violation of E.O. 11246 and this part any time it pays wages, benefits, or other compensation that is the result in whole or in part of the application of any discriminatory compensation decision or other practice." With this change, the paragraph uses the exact language in the FPA and thus clarifies that OFCCP will follow the FPA standard.

Section 60–20.5 Discrimination on the Basis of Pregnancy, Childbirth, or Related Medical Conditions

The proposed rule revised, reorganized, or removed the provisions of § 60–20.5 in the Guidelines, entitled "Discriminatory wages." It moved paragraph 60–20.5(a) (dealing with discriminatory wage schedules) to § 60–20.4 and moved paragraph 60–20.5(b) (dealing with discriminatory job classifications) to § 60–20.2. It deleted paragraph 60–20.5(c) (dealing with coordination with the Wage and Hour Administrator). OFCCP received no comments on these changes, and the final rule incorporates them.

The NPRM introduced a new § 60–20.5, "Discrimination on the basis of pregnancy, childbirth, or related medical conditions." Proposed paragraph 60–20.5(a) incorporated the principles set forth in the PDA that discrimination on the basis of sex includes "because of or on the basis of pregnancy, childbirth, or related medical conditions," and that employers must treat employees and job applicants of childbearing capacity and those affected by pregnancy, childbirth, or related medical conditions the same for employment-related purposes as other persons not so affected but similar in their ability or inability to work. Proposed paragraph 60–20.5(a) also incorporated the provision in the PDA that exempts employers from having to pay for health insurance benefits for abortion "except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion," and the further proviso that nothing in that exemption "preclude[s] a contractor from providing abortion benefits or otherwise affect[s] bargaining agreements in regard to abortion." The proposed provision also included a non-exhaustive list of related medical conditions. For the sake of clarity and ease of comprehension, the final rule divides paragraph 60–20.5(a) into two paragraphs, the first paraphrasing the general provisions of the PDA and the second containing the non-exhaustive list of related medical conditions.

Three commenters address the provision in proposed paragraph 60–20.5(a) that exempted employers from having to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion. One commenter simply states that abortion should not be government-funded.

Another commenter asserts that coverage of abortion insurance benefits is beyond the scope of E.O. 11246. Finally, the religious organization commenter urges OFCCP to remove the proposed provision because, it argues, the requirement that employer-sponsored health plans in some instances include coverage of abortion violates the Weldon amendment[129] and RFRA.

OFCCP notes that nothing in the proposed rule required the federal government to fund abortion. However, OFCCP does not retain the provisions related to abortion in the final rule. OFCCP refers, and will continue to refer, to the EEOC for processing any individual complaints that raise the issue of whether contractors provide health insurance benefits for the abortion exception specified in the PDA. Accordingly, OFCCP removes the language taken from the PDA regarding abortion from paragraph 60–20.5(a) in the final rule. OFCCP therefore need not address the comments regarding the Weldon amendment and RFRA as they pertain to this provision.

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[124] *See Lawrence Aviation* v. *Reich*, 28 F. Supp. 2d 728, 737 (E.D.N.Y. 1998), *aff'd in relevant part, vacated in part*, 182 F.3d 900 (2d Cir. 1999); *OFCCP* v. *Georgia-Pacific Corp.*, 90–OFC–25, Acting Sec'y Final Decision and Order at 10 (December 29, 1990) (180-day limitation contained in 41 CFR 60–1.21 refers to complaints by individual applicants or employees alleging discrimination and is not applicable to compliance evaluations).

[125] 42 U.S.C. 2000e–5(e)(3)(A).

[126] *Mikula* v. *Allegheny Cnty.*, 583 F.3d 181, 184 (3d Cir. 2009).

[127] *Noel* v. *Boeing Co.*, 622 F.3d 266, 271 (3d Cir. 2010).

[128] *Perry* v. *Clinton*, 831 F. Supp. 2d 1, 13 (D.D.C. 2011); *see also Daniels* v. *United Parcel Service, Inc.*, 797 F. Supp. 2d 1163, 1186 (D. Kan. 2011) (employer's misclassification of employee's job title, resulting in denial of greater pay and benefits, constitutes a claim of a discriminatory compensation decision under the FPA); *Coppett* v. *Tenn. Valley Auth.*, 2012 WL 3962902, at *9 (N.D. Ala. September 11, 2012) (forcing employee to take leave for retaliatory reasons can be considered part of a discriminatory compensation decision or other practice).

[129] Consolidated Appropriations Act, 2016, Public Law 114–113, Div. H, title V, sec. 507(d) (December 18, 2015).

Several commenters recommend additions to the list of related medical conditions in proposed paragraph 60–20.5(a) (60–20.5(a)(1) in the final rule). One such recommendation, joined by three commenters, is to add "propensity for pregnancy-related risks that require restrictions, such as avoiding exposure to toxic chemicals." These commenters acknowledge that the need for preventive restrictions may not be "considered a symptom or disorder-related" but argue that preventive restrictions are nonetheless related to pregnancy. OFCCP declines to include this phrase on the list of related medical conditions, for the reason the commenters acknowledge: The "propensity" that may require restrictions is not a human medical condition, but rather a characteristic of the workplace condition, like toxic chemicals exposure, and thus not appropriate for a list of medical conditions.

The commenters similarly urge OFCCP to add "or other preventative measures" to the phrase "complications requiring bed rest" already on the list. OFCCP declines to do so, for two reasons. First, doing so is unlikely to achieve the result that the commenters seek, which is to ensure that pregnant women who are advised by their doctors to avoid certain work conditions to prevent problems with their pregnancies are permitted light duty or other accommodations; the problem is that it is the work conditions, not any pregnancy complications, that require preventive measures. Second, to the extent that there are pregnancy complications that require other preventive measures, the list of related medical conditions is not exhaustive, and such complications may fairly be categorized as medical conditions related to pregnancy or childbirth.

In addition, the final rule addresses the well-documented need for pregnant persons to receive light duty or other accommodations when they need them to prevent unhealthy pregnancy outcomes directly, through the prohibition of discrimination in the provision of workplace accommodations. The NPRM addressed discrimination in the provision of workplace accommodations in proposed paragraph 60–20.5(b)(5); the final rule includes a new provision, paragraph 60–20.5(c), covering such discrimination, which is discussed *infra*.

Several commenters urge OFCCP to include complications related to conception, such as treatment for infertility, in the list of related medical conditions in proposed paragraph 60–20.5(a) (60–20.5(a)(2) in the final rule). OFCCP agrees that employment decisions based on complications related to conception, such as treatment for infertility, may constitute sex discrimination when those decisions are sex specific. The commenters cite a title VII appellate opinion in which the court held that an employee who was terminated for taking time off to undergo *in vitro* fertilization treatments could have a valid sex discrimination claim because surgical impregnation is intrinsically tied to a woman's childbearing capacity.[130] In title VII appellate decisions addressing the exclusion of infertility from employer-provided health insurance, however, courts have generally held that exclusions of all infertility coverage for all employees is gender neutral and thus not sex discrimination under title VII.[131] Nevertheless, title VII may be implicated by exclusions of particular treatments that apply only to one gender.[132] While OFCCP declines to add complications related to conception to the list of related medical conditions, it will follow these principles in implementing paragraph 60–20.5(a)(2).

Several commenters recommend that OFCCP add carpal tunnel and urinary tract infections to the list of related medical conditions. OFCCP declines to do so. The list in proposed paragraph 60–20.5(a) (paragraph 60–20.5(a)(2) in the final rule) is illustrative rather than exhaustive. When these conditions are related to pregnancy or childbirth, the rule will encompass them.

Proposed paragraph 60–20.5(b) set forth some of the most common applications of the general principle of nondiscrimination on the basis of pregnancy, childbirth, or related medical conditions. The examples included refusing to hire applicants because of pregnancy or childbearing capacity (proposed paragraph (b)(1)); firing employees or requiring them to go on leave because they become pregnant or have a child (proposed paragraph (b)(2)); limiting a pregnant employee's job duties based on pregnancy or requiring a doctor's note in order for the employee to continue employment while pregnant (proposed paragraph (b)(3)); providing employees with health insurance that does not cover hospitalization and other medical costs for pregnancy, childbirth, or related medical conditions, including contraception coverage, to the same extent that such costs are covered for other medical conditions (proposed paragraph (b)(4)); and denying alternative job assignment, modified duties, or other accommodations on the basis of pregnancy, childbirth, or related medical conditions (proposed paragraph (b)(5)).

Fifteen comments request addition of provisions specifically addressing breastfeeding, including a provision stating that the denial of an adequate time and place to express milk is sex discrimination; a requirement of 20-minute breaks for pumping; and examples of discrimination against women who return to work and face adverse action because they breastfeed or seek an accommodation to breastfeed. OFCCP declines to include additional provisions related to breastfeeding. Lactation—which is inclusive of breastfeeding—is listed as a "related medical condition" in paragraph 60–20.5(a)(2) in the final rule. Moreover, the lists of examples of disparate treatment in paragraph 60–20.5(b) and of discriminatory denial of pregnancy-based accommodations in paragraph 60–20.5(c) in the final rule are merely illustrative; the fact that they do not include lactation examples does not mean that adverse treatment associated with lactation is not discriminatory. To the contrary, as lactation is a pregnancy-related medical condition, certain adverse actions against a lactating employee, including denial of an adequate time and place to express milk and some of the other breastfeeding examples that commenters propose, will be considered unlawful sex discrimination under this rule.

In addition, OFCCP does not have the authority to require 20-minute breaks for pumping. However, section 7 of the

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[130] *Hall* v. *Nalco Co.*, 534 F.3d 644, 649 (7th Cir. 2008).

[131] *See Saks* v. *Franklin Covey, Inc.*, 316 F.3d 337, 347 (2d Cir. 2003) (holding that the exclusion of surgical impregnation procedures was not discriminatory, even though they were performed only on women, because "the need for the procedures may be traced to male, female, or couple infertility with equal frequency," and thus "male and female employees afflicted by infertility are equally disadvantaged by the exclusion of surgical impregnation procedures"); *Krauel* v. *Iowa Methodist Med. Ctr.*, 95 F.3d 674 (8th Cir. 1996) (holding that, "because the policy of denying insurance benefits for treatment of fertility problems applies to both female and male workers and thus is gender-neutral," it was not intentionally discriminatory, *id.* at 680, and rejecting plaintiff's disparate impact claim because she failed to demonstrate that the exclusion disproportionately harmed women, *id.* at 681).

[132] EEOC Pregnancy Guidance, *supra* note 31, at I.A.3.c.

Fair Labor Standards Act (FLSA) requires covered employers to provide reasonable break time for an employee to express breast milk for nursing children each time such employee has need to express the milk, for up to one year after the child's birth.[133] The FLSA also requires employers to provide employees a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, that may be used to express breast milk.[134] Most contractors are subject to these requirements.

One commenter suggests that the final rule eliminate the phrase "when doctors' notes are not required for employees who are similarly situated" in proposed paragraph 60–20.5(b)(3). The commenter believed that requiring pregnant women to provide doctors' notes simply to continue working their regular jobs without modification is, by itself, impermissible disparate treatment and a burden on pregnant employees. OFCCP agrees with this point, and it deletes the clause "when doctors' notes are not required for employees who are similarly situated." In addition, OFCCP changes the word "employment" in the clause "in order for a pregnant woman to continue employment" to "working" because it is plainer, and changes the word "woman" to "employee" because some persons who have the physiology necessary to have a chance of becoming pregnant do not identify as women (as discussed *supra*). Thus, in the final rule, paragraph 60–20.5(b)(3) reads "Limiting pregnant employees' job duties based solely on the fact that they are pregnant, or requiring a doctor's note in order for a pregnant employee to continue working."

OFCCP received three comments regarding the NPRM's inclusion of contraceptive coverage in proposed paragraph 60–20.5(b)(4), which required that employer-provided health insurance cover contraception to the same extent that medical costs are covered for other medical conditions. One comment commends OFCCP's recognition of contraceptive coverage as a medical cost related to pregnancy that employers must provide, to the extent other medical costs are covered for other conditions. A contractor umbrella organization expresses concern that the rule does not include an exception for contractors with religious and moral objections to contraception coverage and requests clarification of the provision's applicability, given RFRA and the Supreme Court ruling in *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. __(2014). The third commenter, a religious organization, also argues that RFRA forbids application of this portion of paragraph 60–20.5(b)(4) to contractors with religious objections to contraception. In addition, the religious organization commenter argues that title VII case law does not support the rule's requirement that contraceptives be covered in employer-provided health insurance, citing *In re Union Pacific Railroad Employment Practices Litigation*, 479 F.3d 936 (8th Cir. 2007).

Although OFCCP's rule implements the Executive Order, not title VII, OFCCP notes that proposed paragraph 60–20.5(b)(4)'s provision regarding contraceptives is consistent with the EEOC's interpretation of title VII as amended by the PDA. The EEOC has held that an employer's refusal to offer insurance coverage for prescription contraceptives, which are available only for women, is a facially discriminatory policy that violates title VII if the employer offers coverage of other prescription drugs or devices or other types of services used to prevent the occurrence of other medical conditions.[135] However, federal courts addressing this issue have reached different conclusions. As noted by the religious organization commenter, the only circuit court of appeals that has addressed the question disagreed with the EEOC's interpretation.[136] Some district courts in other circuits, however, have adopted the EEOC's approach.[137] Thus, while there is support for the language proposed in the NPRM, OFCCP acknowledges that case law has not yet settled this issue under title VII.

OFCCP further notes that, since these title VII cases were decided, the ACA and its implementing regulations have imposed a requirement that, with limited exceptions, health insurance must cover "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity" at no cost to the insured.[138] Accordingly, the ACA and its implementing regulations guarantee the provision of comprehensive coverage of contraception and related services for most employees. There are numerous and robust ways to enforce this guarantee, including a private right of action under the Employee Retirement Income Security Act of 1974 (ERISA).[139]

Certain types of employers, such as nonprofit religious hospitals, nonprofit religious institutions of higher education, and certain closely held for-profit corporations, that have religious objections to providing contraceptive coverage, are provided with an accommodation so that these employers do not have to contract, arrange, refer, or pay for the coverage, but their employees generally still receive separate payments for contraceptive services from third parties.[140] This final rule does not alter that accommodation in any way.

For these reasons, OFCCP removes the phrase "including contraceptive coverage" from paragraph 60–20.5(b)(4) in the final rule.

One commenter points out that paragraph 60–20.5(b)(5), as well as several places in the NPRM's preamble narrative, refer to "pregnant workers" or "workers who are pregnant," and recommends that, "because there has been considerable confusion regarding the applicability of Title VII to medical conditions beyond pregnancy itself," the language refer instead to "workers who are pregnant or affected by related medical conditions." This change would, the commenter asserts, clarify that the scope of contractors' obligation encompasses addressing conditions

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[133] 29 U.S.C. 207(r)(1).

[134] *Id.* DOL's Wage and Hour Division enforces the FLSA. *See* Wage and Hour Division, U.S. Department of Labor, "Break Time for Nursing Mothers," *available at http://www.dol.gov/whd/nursingmothers/* (last accessed March 26, 2016).

[135] EEOC Decision on Coverage of Contraception (December 14, 2000), *available at http://www.eeoc.gov/policy/docs/decision-contraception.html* (last accessed March 27, 2016).

[136] *In re Union Pac. R.R. Emp't Practices Litig.*, 479 F.3d 936, 943 (8th Cir. 2007).

[137] *Mauldin* v. *Wal-Mart Stores, Inc.*, No. 01–2755, 2002 WL 2022334 (N.D. Ga. August 23, 2002) (certifying a class of female employees alleging that Wal-Mart's lack of coverage for prescription contraception was a violation of Title VII, as amended by the PDA); *Erickson* v. *Bartell Drug Co.*, 141 F. Supp. 2d 1266, 1272 (W.D. Wash. 2001) (holding that, "[i]n light of the fact that prescription contraceptives are used only by women, Bartell's choice to exclude that particular benefit from its generally applicable benefit plan is discriminatory").

[138] U.S. Dep't of Health & Human Servs., Health Res. & Servs. Admin., Women's Preventive Service Guidelines, *available at http://www.hrsa.gov/womensguidelines* (last accessed May 22, 2016).

[139] 29 U.S.C. 1132(a)(1)(B) (a provision of ERISA authorizing plan participants and beneficiaries to bring civil actions against group health plans and health insurance issuers "to recover benefits due to [them] under the terms of [the] plan, to enforce [their] rights under the terms of the plan, or to clarify [their] rights to future benefits under the terms of the plan"); *see also* 29 U.S.C. 1132(a)(5) (a provision of ERISA authorizing the Secretary of Labor to take enforcement action against group health plans of employers that violate this and other requirements); 26 U.S.C. 4980D (a provision of the Internal Revenue Code imposing a tax on group health plans that fail to meet this and other requirements); 42 U.S.C. 300gg–22(b) (a provision of the Public Health Service Act authorizing the Secretary of Health and Human Services, in the absence of state enforcement, to impose civil money penalties on health insurance issuers that fail to meet this and other requirements).

[140] *See* 45 CFR 147.131.

related to pregnancy as well as pregnancy itself. Because OFCCP revises paragraph 60–20.5(b)(5) substantially, referring in that section to "employees who are unable to perform some of their job duties because of pregnancy, childbirth, or related medical conditions," it is not necessary to make the suggested revision in that paragraph. OFCCP reviewed the narrative sections of the preamble and made changes to ensure that the PDA's coverage of pregnancy, childbirth, and related medical conditions is reflected accurately.

The NPRM's proposed paragraph 60–20.5(b)(5) included, as another common example of discrimination based on pregnancy, childbirth, or related medical conditions, the failure to provide reasonable workplace accommodations to employees affected by such conditions when such accommodations are provided to other workers similar in their ability or inability to work. However, since this issue was pending before the U.S. Supreme Court in *Young* v. *UPS* when OFCCP published the NPRM, the NPRM stated that OFCCP would reflect the ruling in *Young* v. *UPS* in the final rule as necessary.

The Supreme Court decided *Young* v. *UPS* on March 25, 2015. Peggy Young, a part-time truck driver for UPS, had alleged that UPS provided light-duty accommodations for truck drivers who were injured on the job, for those who had disabilities within the meaning of the ADA, and for those who lost their Department of Transportation truck driver certifications, but not for those who were affected by pregnancy, childbirth, or related medical conditions. The Court held that if Young could prove that UPS provided more favorable treatment to at least some employees whose situation could not reasonably be distinguished from hers, then these facts would establish a *prima facie* case of pregnancy discrimination. The Court remanded the case for further proceedings during which UPS would have been permitted to offer a legitimate, nondiscriminatory reason for differences in treatment and Young would have been permitted to attempt to rebut that reason by showing that it was pretextual.[141] In describing the legitimate, nondiscriminatory reason, the Court explained that—

> consistent with the Act's basic objective, that reason normally cannot consist simply of a claim that it is more expensive or less convenient to add pregnant women to the category of those ("similar in their ability or inability to work") whom the employer accommodates.[142]

Once the employer offers a legitimate, nondiscriminatory reason that meets this test, it falls to the plaintiff to prove that the employer's proffered reason is pretextual. The Court explained the evidence required on this point as follows:

> We believe that the plaintiff may reach a jury on this issue by providing sufficient evidence that the employer's policies impose a significant burden on pregnant workers, and that the employer's "legitimate, nondiscriminatory" reasons are not sufficiently strong to justify the burden, but rather—when considered along with the burden imposed—give rise to an inference of intentional discrimination.
>
> The plaintiff can create a genuine issue of material fact as to whether a significant burden exists by providing evidence that the employer accommodates a large percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant workers. Here, for example, if the facts are as Young says they are, she can show that UPS accommodates most nonpregnant employees with lifting limitations while categorically failing to accommodate pregnant employees with lifting limitations. Young might also add that the fact that UPS has multiple policies that accommodate nonpregnant employees with lifting restrictions suggests that its reasons for failing to accommodate pregnant employees with lifting restrictions are not sufficiently strong—to the point that a jury could find that its reasons for failing to accommodate pregnant employees give rise to an inference of intentional discrimination.[143]

As the Chair of the EEOC has testified, "[a]s a result of [the *Young*] decision, many pregnant women who were previously denied accommodations will now be entitled to receive them."[144]

The many comments that OFCCP received on paragraph 60–20.5(b)(5) include the comment that 70 national, regional, state, and local women's, civil rights, LGBT, and labor organizations joined, as well as comments that virtually every organization representing contractors submitted. Two comments recommend that OFCCP defer adoption of any part of the rule interpreting *Young* until the EEOC issues new guidance. The EEOC has now issued revised guidance in response to *Young*,[145] and the final rule is consistent with that guidance.

Several of the industry groups suggest that OFCCP should remove the provisions about pregnancy accommodations, given the recent Supreme Court ruling in *Young* v. *UPS*.[146] On the other hand, the women's, civil rights, LGBT, and labor organizations recommend no change to paragraph 60–20.5(b)(5) in light of *Young* v. *UPS*.[147] OFCCP declines to adopt either suggestion but, instead, revises the final rule to reflect the Supreme Court ruling, as described *infra*.

A few commenters do suggest specific language to reflect or clarify the effect of the *Young* v. *UPS* decision. One commenter proposes that paragraph 60–20.5(b)(5) refer to "other employees whose abilities or inabilities to perform their job duties are similarly affected, including but not limited to employees with on-the-job injuries and employees with disabilities including temporary disabilities." As discussed *infra*, in the final rule OFCCP reorganizes proposed paragraph 60–20.5(b)(5) and refers specifically to employees with on-the-job injuries as an example in new paragraph 60–20.5(c)(2). Another commenter proposes that the final rule clarify that employers may not use accommodation policies that impose a "significant burden" on pregnant workers. As discussed *infra*, consistent with *Young* v. *UPS*, the final rule includes the proposed language in new paragraph 60–20.5(c)(1)(ii).

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[141] This litigation has subsequently been settled. In a company statement provided to the media, UPS explained—

> UPS changed its policy because the company recognized that state law, regulatory guidance and the general work environment in the U.S. have evolved. UPS believes it is appropriate to update its workplace policies so that the company can attract and retain the best workforce. The new policy began last January. It strengthens UPS's commitments to treat all workers fairly and supports women in the workplace.
>
> The new UPS policy makes temporary light duty work available to all pregnant employees with medically certified lifting or other physical restrictions. The policy reflects pregnancy-specific laws recently enacted in a number of states where UPS conducts business, and is consistent with new guidance on pregnancy-related accommodations issued by the Equal Employment Opportunity Commission last year.

NBC Washington, "UPS Settles with Maryland Woman in Pregnancy Discrimination Case" (October 1, 2015), *available at http://www.nbcwashington.com/news/local/UPS-Settles-With-Maryland-Woman-in-Pregnancy-Discrimination-Case-330305251.html (last accessed March 11, 2016).*

[142] *Young* v. *UPS*, 135 S. Ct. at 1354.

[143] *Id.* at 1354–55.

[144] Yang Testimony, *supra* note 57, at 7. The EEOC had issued guidance in 2014 on the topic of pregnancy discrimination, part of which was disapproved by the *Young* v. *UPS* decision. The EEOC revised its guidance in June 2015. *See* EEOC Pregnancy Guidance, *supra* note 31.

[145] *See* EEOC Pregnancy Guidance, *supra* note 31.

[146] The joint comment filed by one employer group, for example, states:

> [In *Young* v. *UPS*,] the Court found the [EEOC's] position untenable because it suggested that the PDA confers upon pregnant women "a most-favored-nation status," under which they are automatically entitled to workplace accommodations to the same extent as *anyone* else who is similarly limited, "irrespective of the nature of their jobs, the employer's need to keep them working, their ages, or any other criteria." The Court found that such an approach was unsupported by the text of the PDA and otherwise inconsistent with basic disparate treatment law. . . . [T]he EEOC's discredited position, repeated in the Proposed Rule and now rejected by the Supreme Court, is incompatible with Title VII and the weight of federal appeals court authority. . . . To the extent that *Young* rejects this interpretation of the PDA, OFCCP should delete that corresponding language from the NPRM in its entirety.

[147] The 70-group comment, for example, states:

> The ADAAA's expansive coverage means that employers will accommodate most non-pregnant employees similar in ability to work to pregnant workers with physical limitations; *Young* makes clear that employers who refuse to also accommodate pregnant workers in this situation likely violate the PDA. As a result, employers will typically be required to provide these accommodations to pregnant workers as well under the standard articulated by the Court in *Young*. The rule proposed in the NPRM appropriately reflects this result.

To reorganize proposed paragraph 60–20.5(b)(5), OFCCP removes paragraph (5) from paragraph 60–20.5(b) and substitutes a new paragraph, 60–20.5(c), "Accommodations." Paragraph 60–20.5(c) is divided into two paragraphs: (1) Disparate treatment and (2) Disparate impact.

Paragraph (1), on disparate treatment, provides that it is a violation of the Executive Order for a contractor to deny alternative job assignments, modified duties, or other accommodations to employees who are unable to perform some of their job duties because of pregnancy, childbirth, or related medical conditions in three circumstances, recited in three paragraphs of 60–20.5(c)(1).

The first circumstance, in paragraph 60–20.5(c)(1)(i), is a corollary of Congress's reversal of the reasoning in *Gilbert* v. *General Electric*, 429 U.S. 125 (1976), by the PDA. In *Gilbert*, GE's temporary disability insurance policy provided coverage for all conditions except those related to pregnancy. The Court upheld that exclusion as being not based on sex but, rather, as a distinction between pregnant persons, who are all women, and nonpregnant persons, who include women and men. Congress overturned both that decision and its underlying reasoning that distinctions between pregnancy and nonpregnancy are not distinctions based on sex.[148] As *Young* recognized, "a plaintiff can prove disparate treatment . . . by direct evidence that a workplace policy, practice, or decision relies expressly on a protected characteristic." [149] Thus, an accommodations policy that distinguishes between all pregnant workers on the one hand, and all nonpregnant workers on the other, runs afoul of the PDA. Paragraph 60–20.5(c)(1)(i) states this principle.

The second circumstance, in paragraph 60–20.5(c)(1)(ii), most directly reflects the holding in *Young:* That it is a violation of title VII for an employer to deny alternative job assignments, modified duties, or other accommodations (including light duty) to employees who are unable to perform some of their job duties because of pregnancy, childbirth, or related medical conditions when (a) the employer provides such accommodations to other employees whose abilities or inabilities to perform their job duties are similarly affected, (b) the denial of accommodations "impose[s] a significant burden" on employees affected by pregnancy, childbirth, or related medical conditions, and (c) the contractor's asserted reasons for denying accommodations to such employees "are not sufficiently strong to justify the burden." [150]

The phrase "or is required by its policy or by other relevant laws to provide" is included to cover the situation where a contractor's policy or a relevant law (such as the ADA and Section 503) would require an alternative job assignment or job modification to be provided to an employee not affected by pregnancy, childbirth, or a related medical condition but who is similarly restricted in his or her ability to perform the job, even if no such employees have been accommodated under the policy or law. In such a situation, the existence of the policy or law (*e.g.*, the ADA and Section 503) requiring reasonable accommodation or job modifications for employees with disabilities may affect the analysis required by *Young* of whether the contractor's failure to provide such accommodations to employees affected by pregnancy, childbirth, or related medical conditions who are similar in their ability or inability to work imposes a "substantial burden" on those employees and whether the contractor's justification for that failure is pretextual.

The third circumstance, in paragraph 60–20.5(c)(1)(iii)—"where intent to discriminate on the basis of pregnancy, childbirth, or related medical conditions is otherwise shown"—covers the situation in which OFCCP finds that a denial of an accommodation for pregnancy, childbirth, or a related medical condition is the result of intentional discrimination established by means other than the kind of evidence outlined in subparagraphs 60–20.5(c)(1)(i) and (ii). An example would be evidence of animus against an employee's working during pregnancy on the part of the supervisor who denied a requested accommodation. As *Young* recognized, " '[l]iability in a disparate-treatment case depends on whether the protected trait actually motivated the employer's decision.' "[151]

One commenter suggests that OFCCP add references to specific alternative job assignments, modified duties, or other accommodations that may be required under the accommodations paragraph. In particular, the commenter mentions that reducing lifting requirements, offering light-duty assignments, and allowing employees to drink water and pump breast milk are some ways in which contactors can ensure that workers affected by pregnancy, childbirth, or related medical conditions are reasonably accommodated. Although OFCCP agrees that these are examples of possible reasonable accommodations for workers affected by pregnancy-related conditions, OFCCP declines to add these or other specific examples. The term "or other accommodations" encompasses the examples, as well as other accommodations not specified.

Nine commenters urge OFCCP to include a reference to disparate-impact analysis for pregnancy under section 60–20.5, along with a non-exhaustive list of examples. At least one commenter specifically points out that "a policy of only offering 'light duty' to employees with on-the-job injuries, which excludes pregnant employees, may have a disparate impact and thus would be impermissible unless shown to be job-related and consistent with business necessity." The second paragraph of paragraph 60–20.5 in the final rule, 60–20.5(c)(2), addresses disparate impact. It applies basic disparate-impact principles to policies or practices that deny alternative job assignments, modified duties, or other accommodations to employees who are unable to perform some of their job duties because of pregnancy, childbirth, or related medical conditions, stating that contractors that have such policies or practices must ensure that such policies or practices do not have an adverse impact on the basis of sex unless they are shown to be job-related and consistent with business necessity. The final rule provision also includes, as an example of a policy that might have an unjustified disparate impact based on pregnancy, a contractor's policy of offering light duty only to employees with on-the-job injuries.

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[148] *See Young* v. *UPS*, 135 S. Ct. at 1353.

[149] *Id.* at 1345.

[150] *Id.* at 1354.

[151] *Id.* at 1345 (quoting *Raytheon Co.* v. *Hernandez*, 540 U.S. 44, 52 (2003) (alteration in original)).

Many commenters suggest that OFCCP has the authority to address the need to provide reasonable accommodation for pregnancy not as a nondiscrimination measure but as a form of affirmative action aimed at breaking down barriers to women's acceptance and advancement in the workplace under E.O. 11246. E.O. 11246 requires contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their . . . sex."[152] Under its affirmative action authority, OFCCP could go beyond the nondiscrimination requirements of title VII and, for example, simply require federal contractors to provide light duty, modified job duties or assignments, or other reasonable accommodations to employees who are unable to perform some of their job duties because of pregnancy, childbirth, or related medical conditions (as it requires them to develop, adopt, and update affirmative action programs). OFCCP declines to exercise its affirmative action authority in this way at this time. As discussed in the preamble to the NPRM, OFCCP believes that most employers already provide some form of accommodation when requested.[153] Contractor compliance with the clarified nondiscrimination requirements set out in paragraphs 60–20.5(c)(1) and (2) in the final rule should ensure that many other employees will receive necessary accommodations. Moreover, as the EEOC has indicated, a number of pregnancy-related impairments previously excluded from ADA coverage are likely to be considered disabilities under the Americans with Disabilities Amendments Act of 2008 (ADAAA)[154] and will therefore now require accommodations under the ADA.[155] Should this prove not to be true as the case law develops, OFCCP will reconsider its decision not to require pregnancy-related accommodations under its affirmative action authority.

Nevertheless, OFCCP adds a section to the Appendix to the final rule that makes it a best practice for contractors to provide light duty, modified job duties or assignments, or other reasonable accommodations to employees who are unable to perform some of their job duties because of pregnancy, childbirth, or related medical conditions. It is a best practice for contractors to provide these reasonable accommodations as part of their broader accommodations policies.

A number of commenters urge OFCCP to provide in the final rule that in the wake of the ADAAA, Section 503 will entitle many pregnant workers for contractors to reasonable accommodation for their temporary, pregnancy-related impairments.[156] Other commenters objected to this idea, on the ground that interpretation of or guidance on Section 503 is beyond the scope of sex discrimination regulations. OFCCP agrees that Section 503 may require contractors to provide reasonable workplace accommodations to workers with pregnancy-related impairments, when those impairments fall within the meaning of "disability." In addition, as noted above, EEOC has clarified that some pregnancy-related impairments are likely to be considered disabilities under the amended ADA. OFCCP declines to interpret Section 503 as it relates to pregnancy accommodations in this rule, as doing so would be outside the rule's scope. Nevertheless, contractors should be aware of their obligation to provide reasonable accommodation for pregnancy-related disabilities, unless they can demonstrate that the accommodation would impose an undue hardship on the operation of their businesses.

Proposed paragraph 60–20.5(c) addressed the provision of leave related to pregnancy, childbirth, or related medical conditions. In the final rule, it is renumbered paragraph 60–20.5(d). Proposed paragraph (c)(1) (final rule paragraph (d)(1)) set forth the general Executive Order and title VII principle that neither family nor medical leave may be denied or provided differently on the basis of sex. Proposed paragraph (c)(2)(i) (final rule paragraph (d)(2)(i)) required that employees affected by pregnancy, childbirth, or related medical conditions be granted medical leave, including paid sick leave, on the same basis that such leave is granted to other employees unable to work for other medical reasons. Proposed paragraph (c)(2)(ii) (final rule paragraph (d)(2)(ii)) required that family leave be provided to men on the same terms that it is provided to women.

Proposed paragraph (c)(3) (now (d)(3)) applied disparate impact analysis to contractor leave policies that are inadequate such that they have a disparate impact on members of one sex. This is consistent with the EEOC's Guidelines on Discrimination Because of Sex, 29 CFR 1604.10(c), and Section I.B.2 of its enforcement guidance on pregnancy discrimination. Therefore, failure to provide workers who are temporarily unable to work due to pregnancy, childbirth, or related medical conditions with any parental or medical leave at all, or with insufficient leave, may be unlawful sex discrimination if that failure is found to have an adverse impact on such workers, unless the contractor can demonstrate that the failure to provide leave or sufficient leave is job-related and consistent with business necessity.

Six commenters address NPRM paragraph 60–20.5(c). One commenter proposes that the final rule require paid leave after childbirth. OFCCP does not have the authority to require paid leave under E.O. 11246. OFCCP does have the authority to require that, if contractors provide paid leave, they must do so on the same basis for women as for men (and *vice versa*), and for pregnancy as for other similar disabling conditions. *See* final rule paragraph 60–20.5(d)(2)(i) (requiring contractors to provide job-guaranteed medical leave, including paid sick leave, for employees' pregnancy, childbirth, or related medical conditions on the same terms that medical or sick leave is provided for other medical conditions that are similar in their effect on employees' ability to work); final rule paragraph 60–20.5(d)(2)(ii) (requiring contractors to provide job-guaranteed family leave, including any paid leave, to male employees on the same terms that they provide such family leave to female employees).

One commenter expresses concern that proposed paragraph 20.5(c)(2)(i) (final rule paragraph 20.5(d)(2)(i)) requires contractors to provide more expansive leave rights than are mandated by the FMLA or similar law because, the commenter asserts, the paragraph requires female employees to be eligible for the same amount of leave as other employees unable to work for other medical reasons. Under paragraph 20.5(d)(2)(i), the contractor's provision of medical and sick leave for other medical conditions establishes the terms on which it must provide medical and sick leave for pregnancy, childbirth, and related medical conditions. Thus, if a contractor provides medical or sick leave beyond that required by the FMLA to employees who are unable to work for other medical reasons, then paragraph 20.5(d)(2)(i) requires the contractor to provide leave for pregnancy, childbirth, and related medical conditions on the same terms. The same commenter also asserts that proposed paragraph 60–20.5(c)(3) (final rule paragraph 60–20.5(d)(3)) requires contractors to grant employee leave rights beyond those required by the FMLA and is inconsistent with current law. Paragraph 60–20.5(d)(3) does not categorically require employers to provide leave rights beyond those required under current federal law. OFCCP will review implementation of contractors' leave practices to make determinations about potential discriminatory conduct on a case-by-case basis.

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[152] Executive Order 11246, sec. 202(1).

[153] See Eugene Declercq, Carol Sakala, Maureen Corry, Sandra Appelbaum, and Ariel Herrlich, Childbirth Connection, *Listening to Mothers III: New Mothers Speak Out,* 36 (2013), *available at http://www.childbirthconnection.org/article.asp?ck=10394* (last accessed March 27, 2016) (*Listening to Mothers*).

[154] 122 Stat. 3555, codified at 42 U.S.C. 12102(1)–(2).

[155] According to the EEOC:

> Prior to the enactment of the ADAAA, some courts held that medical conditions related to pregnancy generally were not impairments within the meaning of the ADA, and so could not be disabilities. Although pregnancy itself is not an impairment within the meaning of the ADA, and thus is never on its own a disability, some pregnant workers may have impairments related to their pregnancies that qualify as disabilities under the ADA, as amended. . . . . Moreover, under the amended ADA, it is likely that a number of pregnancy-related impairments that impose work-related restrictions will be substantially limiting [and therefore covered], even though they are only temporary.

EEOC Pregnancy Guidance, *supra* note 31, at II.A (footnotes omitted).

[156] In *Young* v. *UPS,* the Supreme Court "express[ed] no view" about application of the ADAAA to the case because it was filed before the ADA was amended. 135 S. Ct. at 1348.

A women's rights organization requests that proposed paragraph 60–20.5(c)(3) include an explicit reference to the fact that contractors covered by the FMLA are statutorily required to provide eligible employees with up to 12 weeks of unpaid leave a year and must abide by applicable state FMLA laws that provide more expansive coverage. OFCCP declines to do this, as regulations concerning the FMLA are not within its authority. It is important for contractors to remember, however, that the FMLA requires covered employers to provide eligible employees with unpaid, job-protected leave for specified family and medical reasons and that a number of states also have laws that directly address the provision of leave.

One comment, joined by three organizations, suggests that the final rule require that non-birth parents, including adoptive parents, foster parents, and workers standing *in loco parentis,* be entitled to family leave time equal to the family leave time provided to birth mothers. No sex discrimination principle requires equal treatment of birth mothers, on the one hand, and adoptive parents, foster parents, and workers standing *in loco parentis,* on the other. OFCCP therefore declines to add text to the final rule regarding non-birth parents' leave, as doing so would be outside the scope of the sex discrimination regulations.

Section 60–20.6 Other Fringe Benefits

The NPRM proposed to remove the Guidelines' § 60–20.6, entitled "Affirmative action," as the requirements related to affirmative action programs are set forth in 41 CFR parts 60–2 and 60–4. OFCCP received no comment on this change, and the final rule incorporates it. The proposed rule substituted a new § 60–20.6, entitled "Other fringe benefits," divided into three paragraphs. Proposed paragraph 60–20.6(a) stated the general principle that contractors may not discriminate on the basis of sex in the provision of fringe benefits; paragraph (b) defined "fringe benefits" broadly to encompass a variety of such benefits that are now provided by contractors; and paragraph (c) replaced the inaccurate statement found in the Guidelines' paragraph 60–20.3(c) that a contractor will not be considered to have violated the Executive Order if its contributions for fringe benefits are the same for men and women or if the resulting benefits are equal.[157] In the final rule, OFCCP retains the proposed paragraphs for § 60–20.6 with modifications to paragraphs (a) and (b).

OFCCP received four comments on proposed rule § 60–20.6. One commenter urges OFCCP to state explicitly in paragraph 60–20.6(a) that contractors may not condition fringe benefits on the sex of an employee's spouse. OFCCP declines to explicitly include this in the regulatory text, as this expansion was not proposed in the NPRM. OFCCP will follow developing relevant case law in this area in its interpretation of these regulations. Further, OFCCP notes that a claim of discrimination due to a contractor's failure to provide the same fringe benefits to same-sex spouses that it provides to opposite-sex spouses would be actionable under its Executive Order 13672 regulations.

One commenter states that OFCCP's proposed definition of "fringe benefits" in paragraph 60–20.6(b) is "much broader than current regulations/case law" permit. The commenter does not cite specific regulations or cases. OFCCP believes its proposed definition of "fringe benefits" is permissible; however, to ensure consistency with title VII principles, OFCCP adopts the definition of "fringe benefits" that appears in the EEOC's Guidelines on Discrimination Because of Sex. *See* 29 CFR 1604.9(a). Accordingly, OFCCP revises paragraph 60–20.6(b) to read: "As used herein, the term 'fringe benefits' includes, but is not limited to, medical, hospital, accident, life insurance, and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment." Deleted from the final rule are the specific examples "dependent care assistance; educational assistance; employee discounts; stock options; lodging; meals; moving expense reimbursements; retirement planning services; and transportation benefits." OFCCP considers these items to be covered as terms, conditions, or privileges of employment.

Another comment suggests that OFCCP add "flexible work arrangements" as an example of fringe benefits. OFCCP declines to do so. Such an addition would be inconsistent with the decision to use a list that is identical to the list in the EEOC regulations. Moreover, as explained earlier in the preamble, OFCCP does add "treating men and women differently with regard to the availability of flexible work arrangements" at paragraph 60–20.2(b)(3) of the final rule, as an additional listed example of disparate treatment.

Two comments—one from an individual and one from a civil rights legal organization—urge OFCCP to revise the section to prohibit contractors from providing health insurance plans that deny insurance coverage for health care related to gender transition (trans-exclusive plans). One comment states that many health insurance policies are facially discriminatory against transgender individuals because they exclude, for example, "any procedure or treatment, including hormone therapy, designed to change [their] physical characteristics from [their] biologically determined sex to those of the opposite sex." The comment suggests that OFCCP add a new paragraph in § 60–20.6, as follows: "It shall be an unlawful employment practice for a contractor to offer health insurance that does not cover care related to gender identity or any process or procedure designed to facilitate the adoption of a sex or gender other than the beneficiary's designated sex at birth." OFCCP declines to insert this additional language in the final rule because it would be superfluous. Section 60–20.6 forbids discrimination in fringe benefits on the basis of sex. Because the term "fringe benefits" is defined to include medical benefits and the term "sex" is defined to include gender identity, the logical reading of the language proposed in the NPRM, which is adopted into the final rule without change, is that certain trans-exclusive health benefits offerings may constitute unlawful discrimination.[158]

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[157] *See City of Los Angeles* v. *Manhart,* discussed and cited *supra* in the section Reasons for Promulgating this New Regulation; *see also Ariz. Governing Comm.* v. *Norris,* 463 U.S. 1073 (1983).

Contractors are generally responsible for ensuring that fringe-benefit schemes, including health insurance plans, offered to their employees do not discriminate on any of the protected bases set forth in E.O. 11246.[159] Contractors thus must ensure that all of the health insurance plans that are offered to their employees provide services to all employees in a manner that does not discriminate on the basis of sex, including gender identity or transgender status. As discussed below, denying or limiting access to benefits may violate E.O. 11246's prohibition on sex discrimination, consistent with OFCCP Directive 2014–02,[160] as well as its prohibition on gender identity discrimination.

Discrimination in benefits on the basis of gender identity or transgender status may arise under a number of different scenarios. First, transgender individuals may be denied coverage for medically appropriate sex-specific health-care services because of their gender identity or because they are enrolled in their health plans as one gender, where the medical care is generally associated with another gender. Consistent with recent guidance jointly issued by the Departments of Labor, Health and Human Services, and the Treasury pursuant to the ACA,[161] as well as the final rule recently published by the Department of Health and Human Services to implement the ACA's nondiscrimination provision,[162] the nondiscrimination requirements of E.O. 11246 obligate contractors to ensure that coverage for health-care services be made available on the same terms for all individuals for whom the services are medically appropriate, regardless of sex assigned at birth, gender identity, or recorded gender. For example, where an individual could benefit medically from treatment for ovarian cancer, a contractor may not deny coverage based on the individual's identification as a transgender male.

Second, some insurance plans have explicit exclusions of coverage for all health services associated with gender dysphoria[163] or gender transition.[164] Such categorical exclusions are facially discriminatory because they single out services and treatments for individuals on the basis of their gender identity or transgender status, and would generally violate E.O. 11246's prohibitions on both sex and gender identity discrimination.

In evaluating whether the denial of coverage of a *particular* service where an individual is seeking the service as part of a gender transition is discriminatory, OFCCP will apply the same basic principles of law as it does with other terms and benefits of employment—inquiring whether there is a legitimate, nondiscriminatory reason for such denial or limitation that is not a pretext for discrimination, for example.[165] Contractors must apply the same generally applicable standards in determining coverage for health-care services to all employees, regardless of their gender identity or transgender status. If a contractor generally provides coverage for a particular treatment or service, *e.g.*, hormone replacement or mental health care, where it is medically necessary, the contractor cannot decline to provide coverage for that same treatment when it is deemed medically necessary[166] for a transgender individual because the treatment is related to his or her gender identity or transgender status. Contractors may deny or limit coverage only if such denial or limitation is based on the nondiscriminatory application of neutral criteria, for example, where a service is not medically necessary, a qualified provider is unavailable, or inadequate medical documentation has been provided.

In construing the prohibitions on sex and gender identity discrimination as applying in this manner, OFCCP is taking a similar approach to that of several states and the District of Columbia, which have concluded that their statutory or regulatory provisions prohibiting discrimination on the basis of sex and/or gender identity prohibit policy exclusions on the basis of gender identity or transgender status.[167] For example, the Illinois Department of Insurance has interpreted the Illinois Human Rights Act to prohibit (1) policy exclusions of "surgical treatments for gender dysphoria that are provided to non-transgender persons for other medical conditions"; (2) policy exclusions of non-surgical treatments for gender transition, such as hormone therapy, "if that treatment is provided for other medical conditions"; (3) provisions that deny transgender persons coverage or benefits for sex-specific treatment because of their gender identity (*e.g.*, mammograms, ob-gyn visits); and (4) any exclusionary clauses or language that have the "effect of targeting transgender persons or persons with gender dysphoria" (including "sex change" or "sex transformation" exclusions).[168]

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[158] OFCCP notes that OPM issued a Federal Employee Health Benefits (FEHB) Program Carrier Letter on June 23, 2015, stating that, "[e]ffective January 1, 2016, no carrier participating in the Federal Employees Health Benefits Program may have a general exclusion of services, drugs or supplies related to gender transition or 'sex transformations.'" FEHB Program Carrier Letter No. 2015–12, *available at http://www.opm.gov/healthcare-insurance/healthcare/carriers/2015/2015-12.pdf* (last accessed January 9, 2016) (OPM Carrier Letter 2015–12). The letter cited the "evolving professional consensus that treatment may be medically necessary to address a diagnosis of gender dysphoria."

[159] *See, e.g., Ariz. Governing Comm. for Tax Deferred Annuity & Deferred Compensation Plans* v. *Norris,* 463 U.S. 1073 (1983) (applying Title VII). In the alternative, contractors may arrange to provide services to employees independently. *See Norris,* 463 U.S. at 1089–91 (Marshall, J., concurring op. joined by five justices).

[160] OFCCP Directive 2014–02, Gender Identity and Sex Discrimination, *supra* note 86.

[161] U.S. Dep'ts of Labor, Health & Hum. Servs. & the Treasury, FAQs about Affordable Care Act Implementation (Part XXVI), Q.5 (May 11, 2015), *available at http://www.dol.gov/ebsa/faqs/faq-aca26.html (last accessed March 27, 2016).*

[162] 45 CFR 92.207(b)(3)–(5), HHS Nondiscrimination Final Rule, *supra* note 106, 81 FR at 31471–31472.

[163] Gender dysphoria "refers to discomfort or distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth (and the associated gender role and/or primary and secondary sex characteristics)." World Professional Association for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7, 13 *International Journal of Transgenderism* 165, 168 (2011) (WPATH Standards of Care), *available at www.wpath.org/uploaded_files/140/files/IJT* SOC, V7.pdf (last accessed January 22, 2016). Not every transgender person has gender dysphoria. Lambda Legal, Know Your Rights, FAQ on Access to Transition-Related Care (no date), *available at http://www.lambdalegal.org/know-your-rights/transgender/transition-related-care-faq#q2* (last accessed February 22, 2016).

[164] OFCCP intends to interpret the scope of health services related to gender transition broadly and recognizes that such services may change as standards of medical care continue to evolve. The range of transition-related services, which includes treatment for gender dysphoria, is not limited to surgical treatments and may include, but is not limited to, services such as hormone therapy and psychotherapy, which may occur over the lifetime of the individual.

[165] Note that under the EEOC's title VII guidance, the fact that it may cost more to provide benefits to members of a protected group (*e.g.*, to provide health care for women) is not itself a justification for discriminating against that group. EEOC Compliance Manual Chapter 3, Directive No. 915.003, Title VII/EPA Section (October 3, 2000), available at *http://www.eeoc.gov/policy/docs/benefits.html* (last accessed March 27, 2016).

[166] Numerous medical organizations, including the American Medical Association, have recognized that "[a]n established body of medical research demonstrates the effectiveness and medical necessity of mental health care, hormone therapy and sex reassignment surgery as forms of therapeutic treatment for many people diagnosed with GID [gender identity dysphoria]" and that "[h]ealth experts in GID, including WPATH [World Professional Association for Transgender Health], have rejected the myth that such treatments are 'cosmetic' or 'experimental' and have recognized that these treatments can provide safe and effective treatment for a serious health condition." American Medical Association House of Delegates, Resolution 122 (A–08), Removing Financial Barriers to Care for Transgender Patients 1 (2008), *available at http://www.tgender.net/taw/ama_resolutions.pdf* (last accessed May 13, 2016).

[167] *See* Cal. Dep't of Managed Health Care, Letter No. 12–K, Gender Nondiscrimination Requirements (April 9, 2013), *available at https://www.dmhc.ca.gov/Portals/0/LawsAndRegulations/DirectorsLettersAndOpinions/d112k.pdf* (last accessed March 17, 2016); Conn. Insurance Dep't Bulletin IC–34 (December 19, 2013), *available at http://www.ct.gov/cid/lib/cid/Bulletin_IC-37_Gender_Identity_Nondiscrimination_Requirement.pdf* (last accessed March 17, 2016) (interpreting Conn. Gen. Stat. Ann. § 46a–60); D.C. Dep't of Insurance, Securities and Banking, Bulletin No. 13–IB–01–30/13 (February 27, 2014), *available at http://disb.dc.gov/sites/default/files/dc/sites/disb/publication/attachments/ProhibitionofDiscriminationBasedonGenderIdentityorExpression-FINAL.pdf* (last accessed March 17, 2016) (interpreting D.C. Code § 31–

Section 60–20.7 Employment Decisions Made on the Basis of Sex-Based Stereotypes

In the NPRM, OFCCP proposed this new section to provide specific examples of the well-recognized principle that employment decisions made on the basis of sex-based stereotypes about how applicants and employees are expected to look, speak, or act are a form of sex discrimination. The proposed rule preamble cited the Supreme Court's holding in *Price Waterhouse* v. *Hopkins,* 490 U.S. 228 (1989), and several other decisions that consistently applied the principle laid out in that case.[169] In the final rule, OFCCP adopts § 60–20.7 as proposed, with a revision to paragraph (a)(3), the addition of two new examples of prohibited sex-based stereotyping at paragraphs (c) and (d)(1) and with some minor rewording for clarity and to allow for the use of gender-neutral pronouns. The first minor rewording change is to the third sentence at the beginning of § 20.7, so that the Final Rule reads "examples of discrimination based on sex-based stereotyping *may* include" those listed. The addition of "may" clarifies that whether each of the examples is unlawful discrimination will necessarily depend on an examination of the facts in a given case.

OFCCP received two general comments about the examples in proposed § 60–20.7: One from a civil rights legal organization, stating that the section omits prevalent examples of sex stereotyping that should be addressed, and one from a human resources consulting firm, suggesting the removal of the entire section except the first sentence because "[i]t is impossible to catalogue all the possible gender-based stereotypes that employers and OFCCP compliance officers might potentially encounter." Although the examples are not exhaustive, OFCCP retains the examples provided in § 60–20.7 of the final rule, as they accurately reflect real-life situations of prohibited sex-stereotyping drawn from title VII case law and provide guidance to contractors and workers. In addition, as explained below, in response to comments it received, OFCCP has inserted two further examples, both of which are also based on title VII case law.

Proposed paragraph 60–20.7(a)(1) addressed a type of sex-based employment discrimination central to the Supreme Court's holding in *Price Waterhouse,* namely, failing to promote a woman, or otherwise subjecting her to adverse employment treatment, based on sex stereotypes about dress and appearance, including wearing jewelry, make-up, or high heels. One comment on this paragraph specifically requests addition of an example in the final rule to show that requiring a person to conform to gender-specific uniform or appearance codes constitutes sex discrimination. The comment offers the example of uniform or appearance codes applied to gender non-conforming employees to illustrate that different uniform options could be made available to employees but that assigning them by sex is not permissible under title VII principles. Another commenter, however, states that courts have held "that Title VII's prohibition of 'sex discrimination' does not . . . preclude reasonable workplace rules requiring different dress and grooming." Without expressing an opinion on the reach of title VII in this context, OFCCP declines to add this example to the final rule, noting that the list of examples provided in the final rule is not exhaustive. OFCCP will follow title VII principles in enforcing E.O. 11246 with regard to uniform, dress, and appearance requirements.

Proposed paragraph 60–20.7(a)(2) addressed harassment of a man because he is considered effeminate or insufficiently masculine. No comments specifically address proposed paragraph 60–20.7(a)(2), and the final rule adopts the paragraph as proposed, with minor adjustments to language for clarity.

Proposed paragraph 60–20.7(a)(3) set out, as an example of potentially actionable sex stereotyping, "adverse treatment of an employee because he or she does not conform to sex-role expectations by being in a relationship with a person of the same sex." Three comments oppose this proposed example, which they view as prohibiting discrimination on the basis of sexual orientation. The religious organization commenter argues that the inclusion of this example is inconsistent with title VII law and with Congressional efforts to ban sexual orientation discrimination in employment. In addition, the religious organization argues that it would be "incorrect as a matter of law" if the example "intend[s] to say that Title VII protects sexual conduct between persons of the same sex," because "Title VII says nothing about same-sex relationships or conduct." The joint employer organization comment argues that the Federal judicial system has not fully embraced the inclusion of sexual orientation discrimination in title VII and that its inclusion as a form of sex discrimination here is confusing given Executive Order 13672's amendment of E.O. 11246 adding sexual orientation as a protected category. A third commenter

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2231.11(c)); Mass. Office of Consumer Affs. & Bus. Reg., Div. of Insurance, Bulletin 2014–03 (June 20, 2014), *available at http://www.mass.gov/ocabr//doi/legal-hearings/bulletin-201403.pdf* (last accessed March 17, 2016); Or. Dep't of Consumer & Bus. Servs., Or. Ins. Div. Bulletin INS 2012–1, *available at http://www.oregon.gov/DCBS/insurance/legal/bulletins/Documents/bulletin2012-01.pdf* (last accessed March 17, 2016) (interpreting Oregon Equality Act); Vt. Dep't of Financial Regulation, Division of Insurance, Insurance Bulletin No. 174 (April 22, 2013), *available at http://www.dfr.vermont.gov/sites/default/files/Bulletin_174.pdf* (last accessed March 17, 2016) (interpreting 8 V.S.A. § 4724); Letter from Mike Kreidler, Washington State Insurance Commissioner (June 25, 2014), *available at http://www.insurance.wa.gov/about-oic/newsroom/news/2014/documents/gender-identity-discrimination-letter.pdf* (last accessed March 17, 2106) (interpreting RCW 49.60.040). Two additional states, New York and Colorado, have relied on other bases to require insurers to cover transition-related health care.

[168] Ill. Dep't of Insurance, Company Bulletin 2014–10, Healthcare for Transgender Individuals (Jul. 28, 2014), *available at http://insurance.illinois.gov/cb/2014/CB2014-10.pdf* (interpreting 775 ILCS 5/1–103 (O–1)) (emphases omitted) (last accessed May 3, 2016).

[169] *Price Waterhouse,* 490 U.S. at 251 (holding that an employer's failure to promote a female senior manager to partner because of the sex-stereotyped perceptions that she was too aggressive and did not "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry" was unlawful sex-based employment discrimination); *see also, e.g., United States* v. *Virginia,* 518 U.S. 515, 533 (1996) (in making classifications based on sex, state governments "must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females"); *Chadwick* v. *Wellpoint, Inc.,* 561 F.3d 38 (1st Cir. 2009) (making employment decision based on the belief that women with young children neglect their job responsibilities is unlawful sex discrimination); *Prowel* v. *Wise Bus. Forms, Inc.,* 579 F.3d 285 (3d Cir. 2009) (harassment based on a man's effeminacy); *Barnes* v. *City of Cincinnati,* 401 F.3d 729 (6th Cir. 2005); *Smith* v. *City of Salem, supra* note 78; *Schroer* v. *Billington,* 577 F. Supp. 2d 293 (D.D.C. 2008); *Glenn* v. *Brumby,* 663 F.3d 1312 (11th Cir. 2011).

echoes the joint employer organization comment.

As noted above in connection with paragraph 60–20.2(a), a large number of commenters, including the 70 signers to the civil rights organization comment, support expanding that paragraph to encompass not only gender identity discrimination but also sexual orientation discrimination. Thus, these commenters support inclusion of paragraph 60–20.7(a)(3) to protect employees who are in same-sex relationships from sex-stereotyping discrimination on that ground.

Contrary to the suggestions of the commenters that oppose its inclusion, proposed paragraph 60–20.7(a)(3) did not address sexual orientation discrimination *per se;* rather, it addressed a form of sex stereotyping. Many sex-stereotyping cases are derived in large part from *Price Waterhouse,* where the Supreme Court held that employers cannot "evaluate employees by assuming or insisting that they match the stereotype associated with their" sex.[170] Over the past two decades, an increasing number of Federal court cases, building on the *Price Waterhouse* rationale, have found protection under title VII for those asserting discrimination claims related to their sexual orientation.[171] Many Federal-sector EEOC decisions have found the same.[172] Although some Federal circuit courts have rejected the contention that discrimination based on a person's failure to meet the sex stereotype of being heterosexual constitutes sex discrimination under title VII, even those courts recognize the validity of the sex-stereotyping theory in the context of stereotypes involving workplace behavior and appearance, reflecting the types of sex stereotyping found to be actionable in *Price Waterhouse.*[173] It is in that context that the example in paragraph 60–20.7(a)(3) applies, as made clear by the language of paragraph 60–20.7(a), which introduces the subsequent list as examples of "[a]dverse treatment of an employee or applicant for employment because of that individual's failure to comply with gender norms and expectations *for dress, appearance, and/or behavior*" (emphasis added). In light of this legal framework, and for consistency with the position taken by the Department of Health and Human Services in its rule implementing Section 1557 of the ACA, paragraph 60–20.7(a)(3) is amended to cover treatment of employees or applicants adversely based on their sexual orientation where the evidence establishes that the discrimination is based on gender stereotypes.[174] OFCCP declines to take a position on the intent that can be derived from Congress's inaction on the Employment Non-Discrimination Act (ENDA).[175] Further, OFCCP disagrees with the assertion that inclusion of 60–20.7(a)(3) will render Executive Order 13672 and its implementing regulations unnecessary. The example in 60–20.7(a)(3) is but one example of potentially actionable discrimination on the basis of sex stereotyping; Executive Order 13672 provides explicit protection against all manner of discrimination on the basis of sexual orientation.

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[170] 490 U.S. 228, 251 (1989).

[171] *See, e.g., Prowel,* 579 F.3d at 291–92 (harassment of a plaintiff because of his "effeminate traits" and behaviors could constitute sufficient evidence that he "was harassed because he did not conform to [the employer's] vision of how a man should look, speak, and act—rather than harassment based solely on his sexual orientation"); *Nichols* v. *Azteca Rest. Enter., Inc.,* 256 F.3d 864, 874–75 (9th Cir. 2001) (coworkers' and supervisors' harassment of a gay male because he did not conform to gender norms created a hostile work environment in violation of Title VII); *Hall* v. *BNSF Ry. Co.,* No. C13–2160 RSM, 2014 WL 4719007, at *3 (W.D. Wash. September 22, 2014) (plaintiff's allegation that "he (as a male who married a male) was treated differently in comparison to his female coworkers who also married males" stated a sex discrimination claim under title VII); *Terveer* v. *Billington,* 34 F. Supp. 3d 100 (D.D.C. 2014) (hostile work environment claim stated when plaintiff's "orientation as homosexual" removed him from the employer's preconceived definition of male); *Heller* v. *Columbia Edgewater Country Club,* 195 F. Supp. 2d 1212, 1224 (D. Or. 2002) ("[A] jury could find that Cagle repeatedly harassed (and ultimately discharged) Heller because Heller did not conform to Cagle's stereotype of how a woman ought to behave. Heller is attracted to and dates other women, whereas Cagle believes that a woman should be attracted to and date only men."); *Centola* v. *Potter,* 183 F. Supp. 2d 403 (D. Mass. 2002) ("Sexual orientation harassment is often, if not always, motivated by a desire to enforce heterosexually defined gender norms. In fact, stereotypes about homosexuality are directly related to our stereotype about the proper roles of men and women."). *Cf. Videckis* v. *Pepperdine Univ.,* No. CV 15–00298 DDP (JCx), 2015 WL 1735191, at *8 (C.D. Cal. April 16, 2015) (harassment and adverse treatment of students because of their sexual orientation may state a claim of sex discrimination under title IX, because it is a form of sex stereotyping; indeed, "discrimination based on a same-sex relationship could fall under the umbrella of sexual discrimination even if such discrimination were not based explicitly on gender stereotypes").

[172] *Baldwin* v. *Dep't of Transp., supra* note 98, slip op. at 9–11 (July 16, 2015); *Castello* v. *U.S. Postal Serv.,* EEOC Request No. 0520110649 (December 20, 2011) (sex-stereotyping evidence entailed offensive comment by manager about female subordinate's relationships with women); *Veretto* v. *U.S. Postal Serv.,* EEOC Appeal No. 0120110873 (July 1, 2011) (complainant stated plausible sex-stereotyping claim alleging harassment because he married a man); *Culp* v. *Dep't of Homeland Sec.,* EEOC Appeal 0720130012, 2013 WL 2146756 (May 7, 2013) (title VII covers discrimination based on associating with lesbian colleague); *Couch* v. *Dep't of Energy,* EEOC Appeal No. 0120131136, 2013 WL 4499198, at *8 (August 13, 2013) (complainant's claim of harassment based on his "perceived sexual orientation"); *Complainant* v. *Dep't of Homeland Sec.,* EEOC Appeal No. 0120110576, 2014 WL 4407422 (Aug. 20, 2014) ("While Title VII's prohibition of discrimination does not explicitly include sexual orientation as a basis, Title VII prohibits sex discrimination, including sex-stereotyping discrimination and gender discrimination" and "sex discrimination claims may intersect with claims of sexual orientation discrimination.").

[173] *See, e.g., Gilbert* v. *Country Music Ass'n,* 432 F. App'x 516, 520 (6th Cir. 2011) (acknowledging the validity of a sex-stereotyping claim "based on gender non-conforming 'behavior observed at work or affecting . . . job performance,' such as . . . 'appearance or mannerisms on the job,' " but rejecting the plaintiff's sex discrimination claim because his "allegations involve discrimination based on sexual orientation, nothing more. He does not make a single allegation that anyone discriminated against him based on his 'appearance or mannerisms' or for his 'gender non-conformity.' ") (quoting *Vickers* v. *Fairfield Med. Ctr.,* 453 F.3d 757, 763 (6th Cir. 2006); *Pagan* v. *Gonzalez,* 430 F. App'x 170, 171–72 (3d Cir. 2011) (recognizing that "discrimination based on a failure to conform to gender stereotypes is cognizable" but affirming dismissal of the plaintiff's sex discrimination claim based on "the absence of any evidence to show that the discrimination was based on Pagan's acting in a masculine manner"); *Dawson* v. *Bumble & Bumble,* 398 F.3d 211, 221, 222–23 (2d Cir. 2005) (observing that "one can fail to conform to gender stereotypes in two ways: (1) Through behavior or (2) through appearance, but dismissing the plaintiff's sex discrimination claim because she "has produced no substantial evidence from which we may plausibly infer that her alleged failure to conform her appearance to feminine stereotypes resulted in her suffering any adverse employment action").

[174] *See, e.g., Deneffe* v. *SkyWest, Inc.,* No. 14–cv–00348–MEH, 2015 WL 2265373 (D. Colo. May 11, 2015) (allegations that an employer gave a homosexual pilot a negative reference, among other reasons, because the pilot designated his same-sex partner for flight privileges and traveled with his domestic partner—*i.e.,* did not conform to stereotypes about appropriate behavior for men — stated a cause of action of sex discrimination under title VII); *Terveer,* 34 F. Supp. at 116 (hostile work environment claim stated when plaintiff's "orientation as homosexual" removed him from the employer's preconceived definition of male); *Koren* v. *Ohio Bell Tel. Co.,* 894 F. Supp. 2d 1032, 1038 (N.D. Ohio 2012) (taking same-sex spouse's last name was a nonconforming behavior that could support a sex discrimination claim under a sex-stereotyping theory); *Centola,* 183 F. Supp. 2d at 410 ("Sexual orientation harassment is often, if not always, motivated by a desire to enforce heterosexually defined gender norms. In fact, stereotypes about homosexuality are directly related to our stereotype about the proper roles of men and women.").

[175] The most recent version of ENDA was introduced in the 113th Congress (2013–2014) as S. 815 and H.R. 1755, and passed the full Senate by a vote of 64–32. The House did not take action on the bill in the 113th Congress. U.S. Library of Congress.gov, *available at https://www.congress.gov/bill/113th-congress/senate-bill/815/all-info?resultIndex=10* (Senate bill) (last accessed May 25, 2016); *http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?&congress=113&session=1&vote=00232* (Senate vote); *https://www.congress.gov/bill/113th-congress/house-bill/1755/all-info* (House bill) (last accessed March 17, 2016).

In the 114th Congress (2015–2016), identical bills titled the "Equality Act" were introduced in the Senate (S. 1858) and House (H.R. 3185) on July 23, 2015. The bills would, *inter alia,* amend title VII to add sexual orientation and gender identity to the list of classes protected from employment discrimination. U.S. Library of Congress, Congress.gov, *available at https://www.congress.gov/bill/114th-congress/senate-bill/1858, https://www.congress.gov/bill/114th-congress/house-bill/3185* (last accessed March 27, 2016).

Several commenters that support the inclusion of paragraph 60–20.7(a)(3) also suggest changes to it. Three comments suggest changing the proposed paragraph to state explicitly that the prohibition on sex-based stereotyping includes individuals *attracted* to persons of the same sex. OFCCP declines to alter the paragraph in this way. As written, this paragraph provides only one of many potential examples that could illustrate how the prohibition on sex-based stereotyping may apply to applicants and employees who are attracted to persons of the same sex. OFCCP's decision not to make the suggested change should not, however, be interpreted by Federal contractors to mean that they can treat employees or applicants who are attracted to persons of the same sex adversely as long as they are not in a same-sex relationship. Such adverse treatment may also be actionable as sex stereotyping depending on the facts alleged, and in any event is prohibited expressly by E.O. 11246, as amended by E.O. 13672.

Finally, several commenters request that OFCCP include protections for persons who are "perceived as" being in a same-sex relationship in proposed paragraph 60–20.7(a)(3). OFCCP does not incorporate this into the text of the final rule for the same reasons, set forth above, that it declines to alter the example to refer to individuals "attracted to" persons of the same sex. OFCCP notes that under title VII, many courts have found that individuals who are perceived to be of a protected class are protected, regardless of whether they are in fact members of that class.[176] This interpretation of title VII is consistent with EEOC guidance regarding the protected categories of national origin, race, and religion.[177] This is also consistent with paragraph 20.7(b), which as proposed and adopted herein prohibits "[a]dverse treatment of employees or applicants because of their actual *or perceived* gender identity or transgender status" (emphasis added).

Proposed paragraph 60–20.7(b) provided that the adverse treatment of an employee or applicant because of his or her actual or perceived gender identity or transgender status is an example of prohibited sex-based stereotyping. OFCCP received 13 comments about the use of "gender identity" in this particular paragraph. All but three generally support the example of sex stereotyping; eight suggest adding "sexual orientation" to the example; three oppose use of the example; two suggest the use of gender-neutral pronouns; and one highlights discriminatory experiences that transgender employees and applicants commonly face. As explained earlier in the analysis of paragraph 60–20.2(a), the case law in the area of sexual orientation discrimination is still developing, and E.O. 11246, as amended by Executive Order 13672, already explicitly prohibits sexual orientation discrimination. However, OFCCP retains use of the terms "gender identity" and "transgender status" in the final rule. As was also explained in the earlier discussion about paragraph 60–20.2(a), the inclusion of gender identity and transgender status discrimination as sex discrimination is consistent with OFCCP's interpretation of the Executive Order even prior to this final rule, as reflected in its Directive 2014–02.

Three organizations representing LGBT people (in two separate comments) suggest that OFCCP should consider adding an example or otherwise clarifying that just as contractors may not terminate employees for transitioning on the job, they also may not discriminate against employees for failing to live, dress, and work as their birth-assigned sex, and must accept the gender identity asserted by employees and applicants without demanding medical or other evidence that they do not request from other employees under similar circumstances. OFCCP agrees with these examples; they are covered by paragraph 60–20.7(b), which states that adverse treatment of employees or applicants because of their actual or perceived gender identity or transgender status is an example of adverse treatment because of their "failure to comply with gender norms and expectations for dress, appearance, and/or behavior," as well as by paragraph 60–20.2(a), which states that such treatment is a form of sex discrimination.[178] Because they are already covered, OFCCP declines to add them again as specific examples in the final rule. As with all of the examples in the final rule, paragraph 60–20.7(b) is non-exhaustive; failure to include a particular discriminatory fact scenario does not preclude protection under E.O. 11246.

A civil rights legal organization recommends that OFCCP include a new example of discrimination based on sex-based stereotyping in the final rule, to prohibit adverse treatment of a woman "because she does not conform to a sex stereotype about women being in a particular job, sector, or industry." As discussed above in the Reasons for Promulgating this New Regulation section of the preamble, OFCCP has found such steering discrimination based on outdated stereotypes in its compliance reviews.[179] OFCCP includes this new example of discrimination based on sex stereotyping in the final rule, at paragraph 60–20.7(c), because it believes that this sort of sex stereotyping was not fairly represented in proposed paragraphs 60–20.7(a), (b), or (c). In light of this new example at paragraph 60–20.7(c), the final rule renumbers the caretaker stereotype provision in the final rule as paragraph 60–20.7(d).

Eleven comments on proposed paragraph 60–20.7(c) request that the final rule include a statement that discussing current and future plans about having a family during a job interview process may be considered evidence of caregiver discrimination. OFCCP agrees that contractors' bringing up current and future plans about family caregiving during the interview process may be evidence of sex-stereotyping women as caregivers but declines to include this suggested example because, unlike the other examples in the rule, it addresses evidence for proving sex discrimination based on sex stereotypes regarding appropriate roles in caregiving (as opposed to describing the fact situation that OFCCP would consider an example of such discrimination if proved).

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[176] *Kallabat* v. *Mich. Bell Tel. Co.,* No. 12–CV–15470, 2015 BL 194351 (E.D. Mich. June 18, 2015); *Arsham* v. *Mayor & City Council of Baltimore,* No. JKB–14–2158, 2015 WL 590490, at *8 (D. Md. February 11, 2015); *Boutros* v. *Avis Rent A Car Sys.,* No. 10 C 8196, 2013 WL 3834405, at *7 (N.D. Ill. July 24, 2013); *Henao* v. *Wyndham Vacations Resorts, Inc.,* 927 F. Supp. 2d 978, 986–87 (D. Haw. 2013). *Cf. Jones* v. *UPS Ground Freight,* 683 F.3d 1283, 1299–300 (11th Cir. 2012) ("[A] harasser's use of epithets associated with a different ethnic or racial minority than the plaintiff will not necessarily shield an employer from liability for a hostile work environment."); *EEOC* v. *WC&M Enterprises, Inc.,* 496 F.3d 393, 401–02 (5th Cir. 2007) (quoting with approval the EEOC's national origin discrimination guidelines and holding that "a party is able to establish a discrimination claim based on its own national origin even though the discriminatory acts do not identify the victim's actual country of origin."). However, not all courts recognize "perceived as" claims under Title VII. *El* v. *Max Daetwyler Corp.,* 2011 WL 1769805, at *5 (W.D.N.C. May 9, 2011) *aff'd,* 451 F. App'x 257 (4th Cir. 2011) (collecting cases); *see also Burrage* v. *FedEx Freight, Inc.,* 2012 WL 6732005, at *3 (N.D. Ohio December 28, 2012); *Adler* v. *Evanston Nw. Healthcare Corp.,* 2008 WL 5272455, at *4 (N.D. Ill. December 16, 2008); *Lewis* v. *N. Gen. Hosp.,* 502 F. Supp. 2d 390, 401 (S.D.N.Y. 2007); *Butler* v. *Potter,* 345 F. Supp. 2d 844, 850 (E.D. Tenn. 2004).

[177] *See* 29 CFR 1606.1 (national origin); EEOC Compl. Man. § 15–II (2006) (race); EEOC, Employment Discrimination Based on Religion, Ethnicity, or Country of Origin, *available at http://www.eeoc.gov/laws/types/fs-relig_ethnic.cfm* (last accessed March 27, 2016).

[178] These examples are consistent with Executive Order 13672's direct prohibition of gender identity discrimination. *See* OFCCP, Frequently Asked Questions: E.O. 13672 Final Rule ("May an employer ask a transgender applicant or employee for documentation to prove his or her gender identity?" and "What kinds of documents may an employer require a transitioning applicant or employee to provide about the employee's transition?"), *available at http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html#Q32* (last accessed March 27, 2016).

[179] *See supra* text accompanying notes 36–39.

Twelve comments propose adoption of additional examples of caregiver stereotypes, such as employment decisions based on assumptions that women with caregiver responsibilities cannot succeed in fast-paced environments; that women prefer to spend time with family rather than work; that women are less committed to their jobs than full-time employees; that women, as primary caretakers, are less in need of career advancement and salary increases; and that mothers are unwilling to travel or relocate their families for career advancement. Although these proposed examples are not included in the final rule, adverse actions based on caregiver stereotypes that women cannot succeed in fast-paced environments, are unwilling to travel or relocate, or are less committed to their jobs, among other examples, may also constitute discriminatory sex stereotyping. The list of examples included in the final rule is illustrative rather than exhaustive.

Another comment suggests that the final rule include an example of caregiver stereotypes against male employees receiving adverse treatment for caring for their elder parents. The comment explains that adding an example of discrimination against men as caregivers would highlight the sex-based stereotype that "men, much more so than women, are expected to be fully devoted to their jobs and available to work long and unpredictable hours, unhindered by family responsibilities." As there is no other example involving men and elder care in the rule, OFCCP includes the suggested example as new paragraph (d)(4) in the final rule, to clarify that discrimination based on sex stereotypes can harm men as well as women.

One comment proposes the addition of best practices for employers to prevent caregiver stereotypes. OFCCP agrees that providing more time off and flexible workplace policies for men and women, encouraging men and women equally to engage in caregiving-related activities, and fostering a climate in which women are no longer assumed to be more likely to provide family care than men are best practices to prevent caregiver stereotypes that interfere with employees' and applicants' opportunities based on their sex. Accordingly, OFCCP adds these examples to the Appendix collecting best practices for contractors to consider undertaking.

As discussed *supra* in the Overview of the Comments section of the preamble, OFCCP adapts the final rule throughout § 60–20.7 by substituting "their" for "his or her" and "they" for "he or she" and adjusting verbs accordingly.

Section 60–20.8 Harassment and Hostile Work Environments

Although the Guidelines did not include a section on harassment, the courts, EEOC, and OFCCP [180] have recognized for many years that harassment on the basis of sex may give rise to a violation of title VII and the Executive Order. In the proposed rule, OFCCP thus included proposed § 60–20.8, which set forth contractor obligations for offering protections to employees from harassment, including hostile work environments. It incorporated provisions of the EEOC's guidelines relating to sexual harassment, broadly defined harassment because of sex under the Executive Order, and suggested best practices for contractors. OFCCP received 34 comments on this section, primarily from individuals, civil rights groups, and law firms representing contractors. All 34 comments support the new section and indicate that OFCCP regulations covering sexual harassment and hostile work environments are long overdue. Thirteen comments offer suggestions on how to strengthen the section in the final rule. The final rule adopts § 60–20.8 as it was proposed, with one modification to paragraph 60–20.8(b).

As proposed, paragraph 60–20.8(a) generally establishes that harassment on the basis of sex is a violation of E.O. 11246 and describes actions and conduct that constitute sexual harassment. As proposed and as adopted in the final rule, this paragraph incorporates the provision of EEOC's Guidelines relating to sexual harassment virtually *verbatim*.[181] Inclusion of the EEOC language is intended to align the prohibitions of sexually harassing conduct under the Executive Order with the prohibitions under title VII.

Twelve of the comments on paragraph 60–20.8(a) request that OFCCP clarify in the final rule that a contractor may be vicariously liable for harassment perpetrated by lower-level supervisors that have the authority to make tangible employment decisions such as hiring, firing, or demoting an employee in light of *Vance* v. *Ball State University*.[182] These comments also recommend that OFCCP provide detailed guidelines explaining what constitutes a tangible employment action, providing information about the effective delegation doctrine, and clarifying when an employer is liable for harassment by coworkers and nonemployees. OFCCP declines to expand the section in this way. To do so would require incorporation of principles of tort and agency law into the final rule, which OFCCP believes is not necessary. OFCCP recognizes and follows the principles of employer liability for harassment established by the Supreme Court's title VII decisions in this area.

Proposed paragraph 60–20.8(b) defines "harassment because of sex" under the Executive Order broadly to include "sexual harassment (including sexual harassment based on gender identity), harassment based on pregnancy, childbirth, or related medical conditions; and harassment that is not sexual in nature but is because of sex (including harassment based on gender identity)." Twelve of the comments on this paragraph urge OFCCP to elaborate on what constitutes harassment based on gender identity by stating that such harassment includes the intentional and repeated use of a former name or pronoun inconsistent with the employee's current gender identity.[183] The EEOC has held that "[i]ntentional misuse of the employee's new name and pronoun . . . may constitute sex based discrimination and/or harassment." [184] OFCCP agrees with the EEOC that unlawful harassment may include the intentional and repeated use of a former name or pronoun inconsistent with an employee's gender identity. OFCCP declines to add this language to the final rule, however, because it believes that the principle is fairly subsumed by inclusion of the phrase "sexual harassment based on gender identity" in the parenthetical after the term "sexual harassment" in paragraph 60–20.8(b): "Harassment because of sex includes sexual harassment (including sexual harassment based on gender identity)." Moreover, because the determination of whether the use of pronouns inconsistent with an employee's gender identity constitutes a hostile work environment will be highly fact-specific, a categorical prohibition in regulatory text is inappropriate. OFCCP will continue to follow title VII law as it evolves in this context.

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[180] OFCCP's construction regulations require construction contractors to "[e]nsure and maintain a working environment free of harassment, intimidation, and coercion at all sites." 41 CFR 60–4.3(a) (paragraphs 7(a) and (n) of the required Equal Opportunity Clause for construction contracts). In addition, in chapter 3, § 2H01(d), the FCCM recognizes that "[a]lthough not specifically mentioned in the Guidelines, sexual harassment (as well as harassment on the basis of race, national origin or religion) is a violation of the nondiscrimination provisions of the Executive Order" and directs OFCCP compliance officers to "be alert for any indications of such harassment." It goes on to state that "OFCCP follows Title VII principles when determining whether sexual harassment has occurred."

[181] *See* 29 CFR 1604.11(a), *supra* note 64.

[182] 133 S. Ct. 2434 (2013).

[183] Multiple comments cite a 2008–2009 national survey in which 45 percent of transgender workers reported that they had been referred to by the wrong gender pronoun, repeatedly and on purpose. *Injustice at Every Turn, supra* note 16.

[184] *Jameson* v. *Donahoe,* EEOC Appeal No. 0120130992, 2013 WL 2368729 (EEOC May 21, 2013).

Five of the comments on paragraph 60–20.8(b) recommend that OFCCP add the term "sexual orientation" along with gender identity. OFCCP declines to incorporate the term "sexual orientation" in this paragraph, for the same reasons, explained earlier in the preamble, that it declines to incorporate that term in paragraph 60–20.2(a). OFCCP will continue to monitor the developing law on sexual orientation discrimination as sex discrimination under title VII and will interpret the Executive Order's prohibition of sex discrimination in conformity with title VII principles. In any event, contractor employees and applicants are protected from sexual orientation discrimination independently of the sex discrimination prohibition by Executive Order 13672's addition of the term "sexual orientation" in the list of prohibited bases of discrimination in E.O. 11246.

OFCCP does make one alteration to the text of paragraph (b) in the final rule, striking the second parenthetical phrase, "(including harassment based on gender identity)," and replacing it with "or sex-based stereotypes," so that the third clause of paragraph (b) in the final rule reads that harassment based on sex includes "harassment that is not sexual in nature but that is because of sex or sex-based stereotypes." OFCCP removes the parenthetical phrase because it is redundant. OFCCP adds "or sex-based stereotypes" as a result of its decision to list sex-based stereotypes explicitly in paragraph 60–20.2(a).

Another comment asks OFCCP to clarify that discrimination against workers who are victims of gender-based harassment or violence, including domestic violence and stalking, amounts to disparate treatment. OFCCP agrees that sex-based harassment may include violence and stalking if the harassment is "sufficiently patterned or pervasive" and directed at employees because of their sex.[185] Because the proposed text of paragraph 60–20.8(b) states that "[h]arassment because of sex includes . . . harassment that is not sexual in nature but that is because of sex," OFCCP believes it is not necessary to mention violence and stalking as specific examples of such but sex-based conduct.

Paragraph 60–20.8(c) in the proposed rule suggested best practices for procedures that contractors may develop and implement "to ensure an environment in which all employees feel safe, welcome, and treated fairly . . . [and] are not harassed because of sex." One comment applauds the inclusion of "best practice" recommendations in paragraph (c). OFCCP received no other comments on paragraph (c) and adopts it in the final rule. The final rule includes an Appendix of best practices, including those in paragraph (c).

Comments Not Associated With Particular Language in the Rule

Four commenters express general concern that affirmative action requirements lead to hiring based on sex and not qualifications. Nothing in the final rule requires contractors to hire any individual who is unqualified, and OFCCP's existing regulations are clear that no such requirement exists and that giving a preference to any individual on account of any of the bases protected by the Executive Order, absent a predicate finding of discrimination that must be remedied, is unlawful.[186] Further clarifying this point, the final rule contains an express prohibition of employment decisions based on sex in paragraph 60–20.3(a).

A number of commenters make recommendations about how OFCCP should implement the rule. Many suggest that OFCCP should provide technical assistance and training for contractors, employees, and OFCCP investigators. As it does for any new rule or other significant policy development, OFCCP will provide appropriate technical assistance and training for contractors, employees, and OFCCP investigators for this new rule.

Several commenters suggest that OFCCP focus compliance reviews on contractors "in industries with the widest gaps between the average wages of men and women, or in industries with the highest rate of EEOC charge filings." OFCCP regularly reviews its selection procedures to make them more efficient and effective.

One commenter suggests that OFCCP provide "robust subsidies to small businesses which may find it difficult to abide by these new regulations." OFCCP has neither the authority nor the budget to provide subsidies to businesses. OFCCP does, however, hold many compliance assistance events for contractors, including compliance assistance events targeted to small employers, free of charge, and provides one-on-one technical assistance when resources permit. It is anticipated that these compliance assistance events will also help ensure stakeholders understand the requirements of the final rule.

A few commenters recommend action that is within the purview of other government entities, such as passing the Equal Rights Amendment or removing the Executive Order's religious exemption.[187] OFCCP does not have the authority to undertake these actions.

One commenter proposes that OFCCP require contractors to use panels of interviewers of mixed genders for hiring and to omit gender as a question on job applications in order to eliminate bias by the hiring team. OFCCP declines to adopt these suggestions. The first is too prescriptive and burdensome: mixed-gender interview panels would not be practical in the case of every hire. The second is impossible: eliminating gender from job applications would not eliminate its consideration from hiring, as in the great majority of cases, hiring officials would identify applicants' genders from their appearance or names. Moreover, OFCCP regulations require contractors to maintain records on the sex of their employees,[188] and the equal employment opportunity forms that employers must file annually with the

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[185] *See* EEOC, Notice No. N–915–050, "Policy Guidance on Current Issues of Sexual Harassment" (1990), *available at http://www.eeoc.gov/policy/docs/currentissues.html* (last accessed March 27, 2016); *McKinney* v. *Dole,* 765 F.2d 1129, 1138 (D.C. Cir. 1985).

[186] *See, e.g.,* 41 CFR 60–1.4(a), (b) ("The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin."); 41 CFR 60–2.16(e)(1) ("Quotas are expressly forbidden."); 41 CFR 60–2.16(e)(2) ("Placement goals do not provide the contractor with a justification to extend a preference to any individual, select an individual, or adversely affect an individual's employment status, on the basis of that person's . . . sex. . . ."); 41 CFR 60–2.16(e)(4) ("Affirmative action programs prescribed by the regulations in this part do not require a contractor to hire a person who lacks qualifications to perform the job successfully, or hire a less qualified person in preference to a more qualified one."); 41 CFR 60–4.3(10) ("[t]he contractor shall not use the goals . . . or affirmative action standards to discriminate against any person because of . . . sex. . . .").

[187] E.O. 11246, as amended, sec. 204(c).

[188] 41 CFR 60–3.4A and B.

EEOC require reporting of this as well.[189]

Finally, one commenter urges OFCCP to clarify that "make-whole" relief for victims of discrimination must account for increased tax liability due to lump-sum payments of back pay and interest. OFCCP declines to adopt this suggestion for two reasons. First, the issue of the components of make-whole relief is tangential to the rule. Second, the suggestion is applicable to relief not just for sex discrimination but for all types of discrimination within OFCCP's purview, and thus not appropriate for part 60–20. With respect to determining the elements of make-whole relief, as with other aspects of E.O. 11246 enforcement, OFCCP follows title VII principles, including court and EEOC decisions on the impact of lump-sum recovery payments on class members' tax liability, and thus on whether they have in fact been made whole.

Regulatory Procedures

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

OFCCP issues this final rule in conformity with Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify including equity, human dignity, fairness, and distributive impacts.

Under E.O. 12866, OMB must determine whether a regulatory action is significant and therefore subject to its requirements and review by OMB.[190] Section 3(f) of E.O. 12866 defines a "significant regulatory action" as an action that is likely to result in a rule that: (1) Has an annual effect of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

This final rule has been designated a "significant regulatory action" although not economically significant, under sec. 3(f) of E.O. 12866. Accordingly, OMB has reviewed this rule. The final rule is not economically significant, as it will not have an annual effect on the economy of $100 million or more.

The Need for the Regulation

OFCCP's longstanding policy is to follow title VII principles when conducting analyses of potential sex discrimination under E.O. 11246. *See* Notice of Final Rescission, 78 FR 13508 (February 28, 2013). However, the Sex Discrimination Guidelines, substantively unchanged since their initial promulgation in 1970 and re-issuance in 1978, were no longer an accurate depiction of current title VII principles. Congress has amended title VII significantly four times since 1978, the Supreme Court has issued a number of decisions clarifying that practices such as sexual harassment can be unlawful discrimination, and the lower courts and EEOC have applied title VII law in new contexts. Indeed, because OFCCP follows title VII principles in interpreting a contractor's nondiscrimination mandate, OFCCP no longer enforced the Guidelines to the extent that they departed from existing law. Moreover, since the Guidelines were promulgated in 1970, there have been dramatic changes in women's participation in the workforce and in workplace practices. In light of these changes, this final rule substantially revises the Guidelines so that the part 60–20 regulations accurately set forth a contractor's obligation not to discriminate based on sex in accordance with current title VII principles. (A more detailed discussion of the need for the regulation is contained in Reasons for Promulgating this New Regulation, in the Overview section of the preamble, *supra.*)

Discussion of Impacts

In this section, OFCCP presents a summary of the costs associated with the new regulatory requirements in part 60–20. The estimated labor cost to contractors is based on the U.S. Department of Labor, Bureau of Labor Statistics (BLS) data in the publication "Employer Costs for Employee Compensation" issued in December 2014, which lists total compensation for Management, Professionals, and Related Occupations as $55.47 per hour.[191]

There are approximately 500,000 contractor companies or firms, employing approximately 65 million employees, registered in the GSA's SAM database.[192] Therefore, OFCCP estimates that 500,000 contractor companies or firms may be affected by the final rule. The SAM number results in an overestimation for several reasons: the system captures firms that do not meet the $10,000 jurisdictional dollar threshold for this rule; it captures inactive contracts, although OFCCP's jurisdiction covers only active contracts; it captures contracts for work performed outside the United States by individuals hired outside the United States, over which OFCCP does not have jurisdiction; and it captures thousands of recipients of Federal grants and Federal financial assistance, which are not contractors.[193]

Cost of Regulatory Familiarization

Agencies are required to include in the burden analysis the estimated time it takes for contractors to review and understand the instructions for compliance. *See* 5 CFR 1320.3(b)(1)(i). In order to minimize this burden, OFCCP will publish compliance assistance materials including, but not limited to, fact sheets and "Frequently Asked Questions." OFCCP will also host webinars for the contractor community that will describe the new requirements and conduct listening sessions to identify any specific challenges contractors believe they face, or may face, when complying with the requirements.

OFCCP received five comments that address the estimate of time needed for a contractor to become familiar with the new regulatory requirements in the final rule. All indicate that the estimate was low. One of the five provides no additional information or alternative calculation. The remaining four provide alternative estimates of the time it would take for contractors to accomplish regulatory familiarization, ranging from 4 to 15 hours. However, none of these commenters provide data or documentation regarding the time contractors spend on regulatory familiarization. For example, one commenter concludes that the time necessary for regulatory familiarization "would be far closer to 4 or more hours" on the basis of anonymous responses to a solicitation of the opinions of individuals who had previously worked as OFCCP attorneys and contracting legal consultants. These individual opinions are difficult to evaluate absent additional information about the facts underlying the evaluations. Another of the four commenters provides an estimate of the cost of regulatory familiarization of approximately $643 (for a midsize company with a staff of three human resources personnel, four operational directors, two vice presidents, and a president) to $1,000 (for a large firm), but does not explain how the commenter arrived at that estimate. In addition, one commenter criticizes OFCCP's estimate because it does not use the hourly wage rate for the BLS category of "Lawyers" for all the hours of regulatory familiarization, even though not all contractors employ lawyers for this purpose.

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[189] *See, e.g.,* EEOC, Equal Employment Opportunity Standard Form 100, Rev. January 2006, Employer Information Report EEO–1 Instruction Booklet, *available at http://www.eeoc.gov/employers/eeo1survey/2007instructions.cfm* (last accessed July 16, 2015) ("Employees must be counted by sex . . . for each of the ten occupational categories and subcategories.").

[190] 58 FR 51735.

[191] Press Release, Bureau of Labor Statistics, U.S. Department of Labor, Employer Costs for Employee Compensation—December 2015, at 4, *available at http://www.bls.gov/news.release/ecec.t01.htm* (last accessed March 27, 2016).

[192] *See supra* note 13.

[193] In addition to these reasons to believe that the SAM data yield an overestimate of the number of entities affected by this rule, there is at least one reason to believe the data yield an underestimate: SAM does not necessarily include all subcontractors. However, this data limitation is offset somewhat because of the overlap among contractors and subcontractors; a firm may be a subcontractor on some activities but have a contract on others and thus in fact be included in the SAM data.

OFCCP acknowledges that the precise amount of time each company will take to become familiar with the new requirements is difficult to estimate. However, the elements that OFCCP uses in its calculation take into account the fact that many contractors are smaller and may not have the same human resources capabilities as larger contractors. Further, not every contractor company or firm has the same type of staff; for example, many do not have attorneys on staff. The SAM database shows that the majority of contractors in OFCCP's universe are small; for example, approximately 74 percent of contractor companies or firms in the database have 50 or fewer employees, and approximately 58 percent have 10 or fewer employees.

As stated, the Discrimination on the Basis of Sex final rule updates the Guidelines to existing title VII requirements and current legal standards. As such, the final rule clarifies requirements and removes outdated provisions, potentially reducing the burden of contractors trying to understand their obligations and the responsibility of complying with those outdated and in some instances conflicting provisions. Yet, OFCCP recognizes that there may be additional time needed for regulatory familiarization with some concepts contained in the final rule. In particular, OFCCP added 30 minutes to account for the time it takes specifically to digest the regulatory text, with its numerous examples. Thus, taking into consideration the comments received, the broad spectrum of contractors in OFCCP's universe, and the fact that the final rule brings the requirements into alignment with existing standards, OFCCP increases its estimation for regulatory familiarization by 50 percent, from 60 to 90 minutes.

In determining the labor cost, OFCCP uses data found in Table 2, Civilian workers, by occupational and industry group, of BLS's "Employer Costs for Employee Compensation" publication. This publication is a product of the National Compensation Survey and measures employer costs for wages, salaries, and employee benefits for nonfarm private and state and local government workers. The occupational grouping of "Management, professional and related" includes the Standard Occupational Classifications (SOC) for the major groups from SOC 11 through SOC 29 and includes SOC 23 Legal Occupations.[194] OFCCP believes that this broad category better reflects the staffing at its universe of contractors, including smaller contractors. OFCCP retains the use of wage data for the broad category of "Management, professional and related."

Thus, in determining the cost for contractors to become familiar with the requirements of the final rule, OFCCP estimates that it will take 90 minutes or 1.5 hours for management or a professional at each contractor establishment either to read the compliance assistance materials that OFCCP provides in connection with the final rule or to prepare for and participate in an OFCCP webinar to learn more about the new requirements. Consequently, the estimated burden for rule familiarization is 750,000 hours (500,000 contractor companies × 1.5 hour = 750,000 hours) and the estimated cost is $41,602,500 (750,000 hours × $55.47/hour = $41,602,500) or $83 per contractor company.

Cost of Provisions

As stated previously, the final rule replaces OFCCP's Sex Discrimination Guidelines with regulations that set forth requirements that Federal contractors and subcontractors and federally assisted construction contractors and subcontractors must meet in fulfilling their obligations under E.O. 11246 to ensure nondiscrimination in employment based on sex. In order to reduce the burden and increase understanding, the final rule includes examples of prohibited employment practices with each of the provisions.

OFCCP received 28 comments related to the burdens and costs of compliance with the proposed rule. Comments on specific sections are discussed below. Generally, 16 of the comments support the proposed rule, commenting that the costs are minimal and the return on investment high and that the rule would reduce confusion and have a positive effect on the community. Four of the 12 comments that oppose the rule comment generally that the rule imposes significant burden with little benefit but provide no additional specific information. Two of the 12 opposing comments assert that the rule imposes additional burden on contractors for data collection, unspecified recordkeeping requirements, development of affirmative action programs, and employee training. Because the final rule does not require any of these activities, no burden is assessed for them. Below is detailed information that addresses the specific cost and burdens of the final rule by section.

The final rule changes the title of the regulation to provide clarity that the provisions in part 60–20 are regulations implementing E.O. 11246. The title change does not incur burden.

Sections 60–20.1—60–20.4

The final rule makes minor edits to § 60–20.1, including deleting a sentence explaining the reason for promulgating this part of the regulation and modifying the sentence notifying the public that part 60–20 is to be read in connection with existing regulations. These minor edits update the regulations and provide clarity. Because the edits do not cause additional action on the part of contractors, no additional burden is associated with this section.

Section 60–20.2, General prohibitions, of the final rule removes the Guidelines section titled "Recruitment and advertisement" and replaces it with a provision that articulates the general prohibition against sex discrimination in employment. The general prohibition against sex discrimination in employment is not a new provision and as such does not require any additional action on the part of contractors.

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[194] SOC Major Groups: 11—Management Occupations, 13—Business and Financial Operations Occupations, 15—Computer and Mathematical Occupations, 17 0 Architecture and Engineering Occupations, 19—Life, Physical, and Social Science Occupations, 21—Community and Social Science Occupations, 23—Legal Occupations, 25—Education, Training, and Library Occupations, 27—Arts, Design, Entertainment, Sports, and Media Occupations, and 29—Healthcare Practitioners and Technical Occupations.

Commenters express concern that this section of the rule would cause additional burden if it requires contractors to dissolve existing affinity groups for women, adopt "gender neutral" job titles, revise job descriptions, or construct single-user facilities. One comment recommends that OFCCP quantify the cost for Federal contractors to construct single-user, gender-neutral bathrooms.

In adopting its final rule, OFCCP emphasizes that it does not consider contractors' good faith efforts to comply with their affirmative action requirements a violation of the final rule, thus clarifying that there is no need to dissolve affinity groups. The final rule also clarifies that it does not require contractors to avoid the use of gender-specific job titles, although OFCCP considers doing so a best practice. Nor does the final rule require construction of gender-neutral bathrooms. The final rule offers gender-neutral, single-user restrooms as a best practice for contractors to consider, but only requires that contractors allow employees to access sex-segregated workplace facilities that are consistent with their gender identity. Contractors will be able to do this without change to their existing facilities. OFCCP declines to quantify the cost as recommended by the commenter. As there is no need for contractors to incur any of the burdens that the commenters suggest, OFCCP assesses no burden for this provision.

The final rule replaces the Guidelines § 60–20.3 (Job policies and practices) with a new § 60–20.3, "Sex as a *bona fide* occupational qualification." In this section, the final rule consolidates, in one provision, the references to the BFOQ defense available to employers, and updates it with the language set forth in title VII. This reorganization makes it easier for Federal contractors to locate and understand the BFOQ defense. This section reorganizes existing information and does not incur additional burden. Thus, OFCCP assesses no burden for this provision.

Section 60–20.4 replaces the Guidelines provision addressing seniority systems with a new section addressing discrimination in compensation practices.[195] The final rule provides clear guidance to covered contractors on their obligation to provide equal opportunity with respect to compensation. It provides guidance on determining similarly situated employees and conforms to existing title VII principles in investigating compensation discrimination. Two commenters assert that this provision would result in additional burden for contractors related to their analyses of compensation and their compensation practices. OFCCP disagrees, as the final rule does not change existing requirements with regard to compensation discrimination, nor does it change the requirement that contractors with affirmative action programs must conduct in-depth analyses of compensation practices. The final rule merely elaborates on the legal principles applicable to compensation discrimination under the Executive Order, in accordance with title VII law. As such, this section reduces confusion that may have resulted in the analysis of compensation discrimination.

It is true that existing regulations require some contractors to analyze their personnel activity data, including compensation, annually, to determine whether and where impediments to equal employment opportunity exist.[196] The final rule does not create any new requirements or otherwise change the existing regulatory requirement. Therefore, this provision creates no new burden or new benefit (beyond confusion reduction).

Section 60–20.5: Discrimination Based on Pregnancy, Childbirth, or Related Medical Conditions

The final rule addresses discrimination based on pregnancy, childbirth, or related medical conditions in § 60–20.5. Paragraph 60–20.5(a) generally prohibits discrimination based on pregnancy, childbirth, or related medical conditions, including childbearing capacity. This provision clarifies current law that E.O. 11246 prohibits discrimination based on any of these factors and as such does not generate new burden or new benefits (with the exception of reduced confusion).

Final rule paragraph 60–20.5(b) provides a non-exhaustive list of examples of unlawful pregnancy discrimination, including: Refusing to hire pregnant applicants; firing an employee or requiring an employee to go on leave because the employee becomes pregnant; limiting a pregnant employee's job duties based on pregnancy or requiring a doctor's note in order for a pregnant employee to continue working; and providing employees with health insurance that does not cover hospitalization and other medical costs related to pregnancy, childbirth, or related medical conditions when such costs are covered for other medical conditions. The clarification that the examples in paragraph 60–20.5(b) provide reduces contractors' confusion by harmonizing OFCCP's outdated regulations with current title VII jurisprudence.

Final rule paragraph 60–20.5(c) addresses accommodations for pregnant employees. As described in the Section-by-Section Analysis above, in proposed paragraph 60–20.5(b)(5), the NPRM proposed a fifth common example of discrimination based on pregnancy, childbirth, or related medical conditions: failure to provide reasonable workplace accommodations to employees affected by such conditions when such accommodations are provided to other workers similar in their ability or inability to work. Because the issue of pregnancy accommodations was pending before the U.S. Supreme Court (in *Young* v. *UPS, supra*) when OFCCP published the NPRM, OFCCP stated that it would revise the rule to reflect the ruling in *Young* as necessary. The Supreme Court decided *Young* v. *UPS* on March 25, 2015. In light of this decision, OFCCP modifies the final rule. As described *supra* in the Section-by-Section Analysis, OFCCP removes paragraph (5) from paragraph 60–20.5(b) and substitutes a new paragraph, paragraph 60–20.5(c), titled "Accommodations," that treats the topic that was covered in proposed paragraph 60–20.5(b)(5). This new paragraph 60–20.5(c) is divided into two paragraphs: (1) Disparate treatment and (2) Disparate impact.

Paragraph (1), on disparate treatment, provides that it is a violation of E.O. 11246 for a contractor to deny alternative job assignments, modified duties, or other accommodations to employees who are unable to perform some of their job duties because of pregnancy, childbirth, or related medical conditions in three circumstances:

(i) Where the contractor denies such assignments, modifications, or other accommodations only to employees affected by pregnancy, childbirth, or related medical conditions;

(ii) Where the contractor provides, or is required by its policy or by other relevant laws to provide, such assignments, modifications, or other accommodations to other employees whose abilities or inabilities to perform their job duties are similarly affected, the denial of accommodations imposes a significant burden on employees affected by pregnancy, childbirth, or related medical conditions, and the contractor's asserted reasons for denying accommodations to such employees do not justify that burden; or

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[195] In the Guidelines, § 60–20.5 addressed discriminatory wages. The final rule § 60–20.4 incorporates that existing requirement and updates it to be consistent with current title VII law.

[196] 41 CFR 60–2.17(b)(3).

(iii) Where intent to discriminate on the basis of pregnancy, childbirth, or related medical conditions is otherwise shown.

OFCCP believes there is no additional burden for contractors to comply with new paragraph 60–20.5(c)(1). That is because this new paragraph reflects current title VII law as interpreted by the Supreme Court in *Young.* Contractors subject to title VII or to the state antidiscrimination laws that follow title VII precedent are thus already required to comply with this interpretation. In addition, 16 states have laws that require accommodations for pregnant workers,[197] so covered contractors in those states are already required to provide such accommodations and thus comply with this paragraph. However, because the requirement to provide accommodations in certain circumstances may be new for contractors that had not previously provided accommodations or light duty, OFCCP provides an estimate of the cost burden associated with final paragraph 60–20.5(c)(1).[198]

OFCCP uses the estimate that it developed in the NPRM for proposed paragraph 60–20.5(b)(5) as a basis for its estimate of the cost of final paragraph 60–20.5(c)(1) for contractors that had not previously provided accommodations or light duty. That proposed paragraph required contractors to provide alternative job assignments, modified duties, or other accommodations to employees who are unable to perform some of their job duties because of pregnancy, childbirth, or related medical conditions whenever such accommodations are provided to other workers similar in their ability or inability to work. OFCCP estimated that the total cost of that accommodations requirement would be $9,671,000.[199] To arrive at that figure, OFCCP estimated that approximately 2,046,850 women in the Federal contractor workforce would be pregnant in a year, of whom 21 percent (429,839 women) work in job categories likely to require accommodations that might involve more than a *de minimis* cost. Because the incidence of medical conditions during pregnancy that require accommodations ranges from 0.5 percent (placenta previa) to 50 percent (back issues), OFCCP estimated that of the women in positions that require physical exertion or standing, half (or 214,920 women) may require some type of an accommodation or light duty. The *Listening to Mothers* study found that 63 percent, or 135,400, of pregnant women who needed and requested a change in duties, such as less lifting or more sitting, made such a request of their employers, and 91 percent, or 123,214, of those women worked for employers that attempted to address their needs.[200] In addition, OFCCP assumed that of the 37 percent (79,250 women) who did not make a request for accommodation, 91 percent (72,364) would have had their needs addressed had they made such a request. Thus, OFCCP determined that the proposed rule would require covered contractors to accommodate the 9 percent of women whose needs were not addressed or would not have been addressed had they requested accommodation. According to the Job Accommodation Network,[201] the average cost of an accommodation is $500. Therefore, OFCCP estimated that the cost of proposed paragraph 60–20.5(b)(5) would be $9,671,000 ((135,400 − 123,214) + (79,520 − 72,364)) × $500).

However, proposed paragraph 60–20.5(b)(5) was broader—*i.e.,* it covered more circumstances—than revised paragraph 60–20.5(c)(1). The next paragraphs analyze each of the three paragraphs of paragraph 60–20.5(c)(1) in turn to explain how proposed paragraph 60–20.5(b)(5) was broader.

The fact circumstances contemplated in paragraph 60–20.5(c)(1)(i) are those in which contractors do not provide accommodations to workers affected by pregnancy, childbirth, and related medical conditions, but do provide such accommodations to all other workers who are similar in their ability or inability to work. In other words, under this scenario, contractors deny accommodations to workers affected by pregnancy, childbirth, and related medical conditions, and only to those workers. Because proposed paragraph 60–20.5(b)(5) covered *every* circumstance in which contractors deny accommodations to workers affected by pregnancy, childbirth, and related medical conditions, the subparagraph 60–20.5(c)(1)(i) circumstances are a wholly contained subset of the circumstances that proposed paragraph 60–20.5(b)(5) covered.

The circumstances contemplated in paragraph 60–20.5(c)(1)(ii) are similarly a subset of the proposed paragraph 60–20.5(b)(5) circumstances. That is because, pursuant to *Young,* the new paragraph requires contractors to provide alternative job assignments, modified duties, or other accommodations to employees who are unable to perform some of their job duties because of pregnancy, childbirth, or related medical conditions only when the denial of accommodations imposes a significant burden on employees affected by pregnancy, childbirth, or related medical conditions and the contractor's asserted reasons for denying accommodations to such employees do not justify that burden. It is difficult to ascertain precisely how much narrower this set of circumstances is than proposed paragraph 60–20.5(b)(5), because OFCCP does not have sufficient information to estimate how frequently "denial of accommodations [will] impose[ ] a significant burden on employees affected by pregnancy, childbirth, or related medical conditions and the contractor's asserted reasons for denying accommodations to such employees [will] not justify that burden." But by definition, contractors are required to accommodate workers affected by pregnancy, childbirth, and related medical conditions less frequently under paragraph 60–

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[197] As of December, 2015, these states included Alaska (Alaska Stat. § 39.20.510); California (Cal. Gov't Code § 12945); Connecticut (Conn. Gen. Stat. § 46a–60(a)(7)); Delaware (Del. Code Ann. title 19 § 711); Hawaii (Haw. Code R. § 12–46–107); Illinois (775 Ill. Comp. Stat. 5/2–102(I)); Louisiana (La. Rev. Stat. Ann. § 23:342); Maryland (Md. Code Ann. State Gov't § 20–609); Minnesota (Minn. Stat. § 181.9414); Nebraska (Neb. Rev. Stat. §§ 48–1107.01, 1121); New Jersey (N.J. Stat. Ann. § 10:5–12(s)); New York (N.Y. Exec. Law §§ 292, 296); North Dakota (N.D. Cent. Code § 14–02.4–03(2)); Rhode Island (R.I. Gen. Laws § 28–5–7.4(a)); Texas (Tex. Lab. Code Ann. §§ 21.051, 21.106); and West Virginia (W. Va. Code. R. § 5–11–9(B)). New York City, the District of Columbia, Philadelphia, Providence, and Pittsburgh have such laws as well; their laws apply to employers of fewer than 15 employees. *See National Partnership for Women & Families,* Reasonable Accommodations for Pregnant Workers: State and Local Laws, December 2015, *available at http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/reasonable-accommodations-for-pregnant-workers-state-laws.pdf* (last accessed March 25, 2016).

[198] Because the Supreme Court had not yet clarified title VII law when the NPRM was published, and therefore some contractors had not previously provided accommodations or light duty, OFCCP similarly provided an estimate in the NPRM of the burden associated with proposed paragraph 60–20.5(b)(5) for such contractors.

[199] OFCCP's methodology was described in greater detail in the preamble to the NPRM. 80 FR at 5262–63.

[200] *Listening to Mothers, supra* note 153.

[201] Job Accommodation Network, *Workplace Accommodations: Low Cost, High Impact—Annually Updated Research Findings Address the Costs and Benefits of Job Accommodations* 4 (2014), *available at http://askjan.org/media/downloads/LowCostHighImpact.doc* (last accessed March 9, 2016).

20.5(c)(1)(ii) than they would have been under proposed paragraph 60–20.5(b)(5).

The circumstance contemplated in paragraph 60–20.5(c)(1)(iii) were not explicitly mentioned in proposed paragraph 60–20.5(b)(5). But because they make express a basic tenet of title VII law—that intentional discrimination may be manifest in a variety of ways—they were implicit in the proposed rule. Proposed paragraph 60–20.5(b)(5) therefore subsumed the circumstance in paragraph 60–20.5(c)(1)(iii).

Thus, combining the circumstances that paragraphs (i), (ii), and (iii) of paragraph 60–20.5(c)(1) together cover, the circumstances that paragraph 60–20.5(c)(1) covers are narrower than those that proposed paragraph 60–20.5(b)(5) covered. Because of the difficulty in estimating *how much* narrower, however, for purposes of this rulemaking, OFCCP assumes that the maximum cost for contractor compliance with new subparagraph 60–20.5(c)(1) is equal to the $9,671,000 cost that OFCCP estimated for contractor compliance with proposed paragraph 60–20.5(b)(5). This estimate represents the maximum cost because by definition, the cost for paragraph 60–20.5(c)(1) is *less* than that for proposed paragraph 60–20.5(b)(5).

Many comments support OFCCP's proposal in paragraph 60–20.5(b)(5) that generally required contractors to provide accommodations to pregnant employees. In support, these commenters report that accommodating pregnant employees is good for business and that the costs of accommodating pregnant employees are minimal.

On the other hand, several commenters suggest that OFCCP's estimated cost of accommodations was low or should be a range. One comment cites an alternate study indicating that pregnant women are prescribed some form of bed rest each year, for which additional burden should be assessed. This study functions as an online informational brochure for pregnant women which defines bed rest and its use. OFCCP's estimate of burden assesses the conditions that may require accommodations during pregnancy. While bed rest may be a way to address some of the conditions that OFCCP factored into its assessment, bed rest in itself is not a condition of pregnancy. Therefore, OFCCP declines to modify its assessment to include bed rest.

The same comment recommends that OFCCP assess burden for workers in all job categories, rather than just the categories of craft workers, operatives, laborers, and service workers. When developing its assessment of burden, OFCCP considered the types of accommodations needed and the types of jobs in the various job categories. The report *Listening to Mothers*[202] identified four pregnancy-related accommodations that may be required, depending on the jobs involved: More frequent breaks, changes in schedule, changes in duties such as less lifting and more sitting, and other adjustments. Considering the types of jobs in each of the job categories and the primary functions of those jobs, OFCCP determines that the jobs in the craft worker, operatives, laborers, and service worker categories are the most physically demanding and likely to limit workers' ability to take breaks when needed, reduce lifting, and sit. Thus, OFCCP retains its analysis using the job categories of craft workers, operatives, laborers, and service workers.

Finally, the comment questions whether the Job Accommodation Network's estimate for disability accommodations is "likely sufficient to accommodate a pregnant employee" because it covers all types of accommodations. The commenter is correct that the Job Accommodation Network estimate of $500 accounts for all types of accommodations. OFCCP acknowledged in the NPRM that this may be an overestimation and as multiple other commenters stated, the cost of accommodating a pregnant worker is minimal and results in benefits to employers, including reduced workforce turnover, increased employee satisfaction, and productivity.

One of the industry group commenters acknowledges that "the estimate of annual accommodation costs of $9,671,000 appears to be a reasonable foundation," but contends that this estimate is incomplete, and urges OFCCP to undertake further empirical research to assess the accommodation costs more fully. On the other hand, multiple other commenters describe the burden of accommodating pregnancy as either "minimal," or "not burdensome." One contractor organization, which surveyed its membership, comments that the "majority of the respondents felt that OFCCP's regulations will not impose additional duty on federal contractors to provide accommodations to pregnant employees, noting that 90 percent of respondents said that there won't be any impact to the organization." In addition, OFCCP's rule merely harmonizes its regulations with the existing requirements of title VII, as defined by the Supreme Court. As stated below, only those Federal contractors with 14 or fewer employees that are in states that do not have laws that prohibit discrimination on this basis will be required to make changes to their policies to come into compliance. Thus, OFCCP believes that its estimate is sufficient and may be an overestimation of burden.

The second paragraph of paragraph 60–20.5 in the final rule, 60–20.5(c)(2), applies disparate-impact principles to policies or practices that deny alternative job assignments, modified duties, or other accommodations to employees who are unable to perform some of their job duties because of pregnancy, childbirth, or related medical conditions. It states that contractors that have such policies or practices must ensure that such policies or practices do not have an adverse impact on the basis of sex unless they are shown to be job-related and consistent with business necessity. The provision also includes, as an example of a policy that might have an unjustified disparate impact based on pregnancy, a contractor's policy of offering light duty only to employees with on-the-job injuries. Like the circumstance in paragraph 60–20.5(c)(1)(iii), this circumstance was not made express in proposed paragraph 60–20.5(b)(5). But as an expression of a basic principle of title VII law, it makes explicit what was implicit in the proposed rule. Thus, it does not add to contractors' existing obligations under title VII and OFCCP assesses no burden for it.

Proposed paragraph 60–20.5(c)(3) stated that it is a best practice for contractors to provide light duty, modified job duties, or assignments to pregnant employees and applicants. In the final rule, this paragraph appears in the Appendix. Since this paragraph does not *require* contractors to provide accommodations, nor to take any action, there is no burden associated with it.

Final rule paragraph 60–20.5(d) (proposed paragraph 60–20.5(c)) prohibits discriminatory leave policies based on sex, including pregnancy, childbirth, or other related medical conditions. This paragraph is the same in the final rule as it was in the proposed rule (except for the renumbering). Because it is consistent with title VII, OFCCP assesses no burden for it.

In sum, § 20.5 provides clarification and harmonizes OFCCP's requirements to existing title VII requirements; as such, no new burden or new benefits is created with the final rule. If any burden is created, it is less than $9,671,000, or $19 per contractor.

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[202] *Listening to Mothers, supra* note 153. OFCCP discussed its consideration of this study in the NPRM. 80 FR at 5262.

Section 60–20.6: Other Fringe Benefits

The final rule replaces the current § 60–20.6 (Affirmative action) with a new section titled "Other fringe benefits." Section 60–20.6 clarifies the existing requirement of nondiscrimination in fringe benefits, specifically with regard to application of that principle to contributions to and distributions from pension and retirement funds and to providing health-care benefits. One commenter, the contractor industry liaison group that surveyed its members, found that the majority did not anticipate any impact, as fringe benefits are already offered without regard to sex. On the other hand, one industry commenter states that this section of the proposed regulation "is completely new or so thoroughly revised as to represent essentially new compliance requirements," and urges OFCCP to provide estimates of this section's compliance costs, such as "the costs of establishing and maintaining requisite procedures, operating, records, and internal compliance assessment systems."[203] Prohibiting discrimination in benefits, including in health-care benefits, is not a new requirement under E.O. 11246. Further, the final rule does not require the establishment of procedures, records or internal compliance assessment systems. Thus, OFCCP declines to estimate the costs that the commenter suggests.

With regard to pension-related costs, both the proposed and final rule reflect the current state of title VII law with regard to pension funds, imposing no additional burden on contractors covered both by E.O. 11246 and by title VII (which, generally, covers employers of 15 or more employees) or by state or local laws that similarly prohibit sex discrimination (many of which have lower coverage thresholds). Indeed, this has been the law since the Supreme Court's *Manhart* decision in 1978.[204] As to the remaining contractors, those that have fewer than 15 employees as defined by title VII, are not covered by state or local laws, and have at least $10,000 in Federal contracts or subcontracts, as noted in the discussion of this requirement elsewhere in the preamble, OFCCP's publicly available Federal Contract Compliance Manual (FCCM) put them on notice that OFCCP follows current law with regard to providing equal benefits and making equal contributions to pension funds for men and women. Thus, as an existing requirement, this does not generate any new benefits (beyond reduced confusion) or additional burden.

With regard to fringe benefits for same-sex spouses, as explained *supra*,[205] the text of the final rule does not include a provision to the effect that conditioning fringe benefits on the sex of an employee's spouse is sex discrimination. The preamble does state that the agency will follow relevant developing case law in this area in its interpretation of these regulations.[206] But even if the agency does interpret these regulations to require contractors to offer to same-sex spouses the same fringe benefits that they offer to opposite-sex spouses, the import of the Supreme Court's ruling in *Obergefell* v. *Hodges,* 576 U.S. ____(2015), recognizing the legality of same-sex marriage, is that benefits for which spouses are eligible must be provided regardless of the sex of the spouse. In addition, the independent prohibition of discrimination based on sexual orientation contained in E.O. 11246 and its regulations requires contractors to offer same-sex spouses the same fringe benefits that they offer opposite-sex spouses.[207] Thus, OFCCP does not believe that its interpretation of the final rule will affect contractors' behavior with respect to providing fringe benefits to same-sex spouses. For these reasons, OFCCP does not assess any additional cost under this rule for contractors' providing such benefits.

As discussed in the Section-by-Section Analysis, § 60–20.6 also prohibits discrimination in medical benefits on the basis of gender identity or transgender status. The term "fringe benefits" is defined to include medical benefits and the term "sex" is defined to include gender identity. Thus, the effect of the regulatory language ("It shall be an unlawful employment practice for a contractor to discriminate on the basis of sex with regard to fringe benefits") is that contractors may not discriminate on the basis of gender identity with regard to medical benefits. The preamble to this final rule states that "[t]he logical reading of the language proposed in the NPRM, which is adopted into the final rule without change, is that certain trans-exclusive health benefits offerings may constitute unlawful discrimination,"[208] and goes on to describe the circumstances under which OFCCP may determine that health-benefits offerings constitute discrimination.[209]

Further, discrimination on the basis of gender identity in the provision of fringe benefits already falls within the scope of E.O. 11246 and its existing regulations. Since issuance of its Directive on Gender Identity and Sex Discrimination in August 2014, it has been OFCCP's position that prohibited sex discrimination includes discrimination on the bases of gender identity and transgender status. Moreover, the independent prohibition of discrimination based on gender identity contained in E.O. 11246 and its regulations bans discrimination in rates of pay and other forms of compensation, which include all manner of employee benefits.

OFCCP recognizes that there has been some uncertainty among contractors and other stakeholders who may not have understood this nondiscrimination obligation under existing authorities, given that the agency has received comments and questions from stakeholders. Understanding that some contractors may recognize a need to update their plans in light of the guidance provided in this final rule, OFCCP has decided to provide an evaluation of the cost for contractors to remove unlawful benefits exclusions or otherwise come into compliance with the prohibition on gender identity discrimination in the provision of employment-based health-care benefits.

This prohibition affects only those contractors that currently offer health-benefit plans[210] that exclude transition-related benefits in a discriminatory manner or otherwise discriminate on the basis of gender identity. While OFCCP does not know how many contractors offer health-benefit plans that discriminate on the basis of gender identity, many employers already offer nondiscriminatory plans, and that number is increasing.[211]

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[203] The commenter does acknowledge that there is a "baseline proportion of covered employers who are already in full compliance."

[204] *See supra* note 157.

[205] *See* the discussion of "Section 60–20.6 Other Fringe Benefits" in the Section-by-Section Analysis.

[206] *Id.*

[207] *Id.*

[208] *Supra* text accompanying note 158.

[209] *Supra* text accompanying notes 161–166.

[210] Approximately 57 percent of employers offer health-care benefits to employees. Kaiser Family Foundation and Health Research Educational Trust, 2015 Employer Health Benefits Survey, Summary of Findings (September 22, 2015), *available at http://kff.org/report-section/ehbs-2015-summary-of-findings/* (Kaiser Health Benefits Survey 2015) (last accessed January 27, 2016). While no research on the provision of employment-based health-care benefits is specific to contractors, OFCCP is not aware of any reason to believe that the population of contractors is significantly different from the broader employer population with respect to whether they offer employment-based health-care benefits.

[211] The Human Rights Campaign Foundation's 2016 Corporate Equality Index (CEI) reports that the number of businesses that offer transgender-inclusive health coverage has increased from zero in 2002 to 40 percent of Fortune 500 companies and

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To assess the cost for contractors coming into compliance, OFCCP reviewed a 2012–2013 survey of 34 public and private employers,[212] a 2012 assessment by the California Insurance Department of the cost of a proposed regulation prohibiting transition-exclusive health insurance in California and the data on which it relied,[213] and projections of the cost of providing transition-related health-care benefits to the members of the military published in the *New England Journal of Medicine,*[214] which are described in the text below. Based on this review, OFCCP determines that the cost of adding nondiscriminatory health-care benefits is most likely to be *de minimis.*

This result is due in large part to the rarity of gender dysphoria [215] and gender transition. Inexpensive hormone therapy is the most commonly sought treatment,[216] and it is often already covered by insurance plans as the treatment for diagnoses other than gender dysphoria. Further, only a small percentage of individuals with a need for health services related to gender transition undergo the most expensive treatment, genital surgery, because they do not choose it or meet the physical, diagnostic, and other qualifications for it.[217] Moreover, "surgical treatment . . . is usually a once-in-a-lifetime event, and many costs are spread over a lifetime, and do not occur in just a single year." [218] Studies of utilization of transgender-nondiscriminatory health-care benefits provided by both private and public employers confirm this data, placing the utilization rate at between 0 and 0.325 per thousand employees per year.[219]

After assessing the experiences of five public employers when they eliminated gender-identity discrimination in the provision of health insurance to their employees, the California Insurance Department characterized the impact on costs of a proposed regulation prohibiting such discrimination in health insurance in California as "immaterial" and assigned a value of $0 to such costs in its economic impact assessment.[220] The Insurance Department relied particularly on the experiences of the City and County of San Francisco (San Francisco) and the University of California, neither of which charged any additional premium for health insurance covering transition-related medical costs.[221]

Likewise, a 2013 Williams Institute study of employers that provided nondiscriminatory health-care coverage found that providing transition-related benefits has "zero to very low costs." [222] Of the respondents that provided "information about the cost of adding transition-related coverage to existing health-care plans," 85 percent reported no costs.[223] And of the employers that provided information about actual costs that they incurred as a result of employees' utilizing the transition-related health-care coverage, 67 percent reported no actual costs.[224] Of those that incurred some costs based on benefit utilization, only one, a self-insured employer with approximately 10,000 employees, provided enough specific information to allow an estimate of the proportion of overall health-insurance costs attributable to the transgender-inclusive benefit; that proportion was 0.004 percent.[225]

The DOD study published in the *New England Journal of Medicine* provided an estimate of the increase in cost for providing transition-related health-care benefits to the members of the military. This study projected an annual increase of $5.6 million, or 0.012 percent of health-care costs—"little more than a rounding error in the military's $47.8 billion annual health care budget." [226]

OFCCP also considered whether there might be an increase in demand for transition-related health-care services that would affect benefits utilization and therefore cost. Of the available public information about actual utilization and cost adjustments over time, there is a small amount of evidence of an increase in utilization—in one plan that the University of California offered and one offered by one respondent to the Williams Institute

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60 percent of the CEI universe of businesses in 2016. Human Rights Campaign Foundation, Corporate Equality Index 2016 (2015) 4, 16, available at *http://hrc-assets.s3-Web site-us-east-1.amazonaws.com//files/assets/resources/CEI-2016-FullReport.pdf* (last accessed January 23, 2016).

[212] Cost and Benefits of Providing Transition-Related Health Care Coverage in Employee Health Benefits Plans, Williams Institute, September 2013 (Williams Institute Study), available at *http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Cost-Benefit-of-Trans-Health-Benefits-Sept-2013.pdf* (last accessed January 24, 2016).

[213] Economic Impact Assessment, Gender Nondiscrimination in Health Insurance, State of California Department of Insurance, April 13, 2012 (Cal. Ins. Dept. Assessment), available at *http://transgenderlawcenter.org/wp-content/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimination-In-Health-Insurance.pdf* (last accessed January 24, 2016). The U.S. Department of Health and Human Services relied in part on the California Insurance Department Assessment to "estimate that providing transgender individuals nondiscriminatory insurance coverage and treatment will . . . have de minimis impact on the overall cost of care and on health insurance premiums." HHS Nondiscrimination Final Rule, supra note 106, at 31457.

[214] A. Belkin, "Caring for Our Transgender Troops—The Negligible Cost of Transition-Related Care," 373 New Eng. J. Medicine 1089 (September 15, 2015) (DOD Study).

[215] Data from 25 specialty hospital- and university-based clinics around the world serving as gateways for surgical and hormonal sex reassignment reported the prevalence of adults with gender identity disorder at between 0.0065 percent and 0.0173 percent of the population. K. Zucker and A. Lawrence, Epidemiology of Gender Identity Disorder: Recommendations for the Standards of Care of the World Professional Association for Transgender Health, 11 International Journal of Transgenderism 8, 13, 16 (2009), *available at http://dx.doi.org/10.1080/15532730902799946* (last accessed February 24, 2016). *See also* Cal. Ins. Dept. Assessment at 3 (reporting on study based on medical diagnoses of gender identity disorder finding prevalence range as low as 0.0014–0.0047 percent). After these studies were published, the diagnostic term "gender dysphoria" replaced "gender identity disorder." American Psychiatric Association, Gender Dysphoria (2013), *available at http://www.dsm5.org/documents/gender%20dysphoria%20fact%20sheet.pdf* (last accessed March 3, 2016).

[216] D. Spade, "Medicaid Policy & Gender-Confirming Healthcare for Trans People: An Interview with Advocates," 8 *Seattle Journal for Social Justice* 497, 498 (2010) (Medicaid Policy & Gender-Confirming Healthcare), *available at http://digitalcommons.law.seattleu.edu/sjsj/vol8/iss2/4* (last accessed January 22, 2016).

[217] Medicaid Policy & Gender-Confirming Healthcare at 498. The WPATH Standards of Care prescribe a period of at least 12 continuous months of hormone therapy, of the "experience of living in an identity-congruent gender role," or both, before performance of genital surgeries. WPATH Standards of Care at 202.

[218] Cal. Ins. Dept. Assessment, *supra* note 213, at 8.

[219] Williams Institute Study at 2 (for the figure 0); Cal. Ins. Dept. Assessment at 6, 14 (citing Wilson, A., Transgender-Inclusive Health Benefits: Costs, Data for Cost Calculation (Jamison Green and Associates 2012) (Wilson Cost Study) for the figure 0.325). According to the Williams Institute Study, the figure of 0.325 per thousand that the California Insurance Department cites is not a correct report of the findings of the Wilson Cost Study; the correct figure is 0.22 per thousand. Williams Institute Study at 6 and 22, note 18.

[220] Cal. Ins. Dept. Assessment, *supra* note 213, at 5. The five employers were the University of California, the City and County of San Francisco, and the Cities of Berkeley, Portland, and Seattle.

[221] Human Rights Campaign, *San Francisco Transgender Benefit: Total Claims Experience and Plan Evolution, By Year (2001–2006) (HRC SF Report), available at http://www.hrc.org/resources/san-francisco-transgender-benefit-total-claims-experience-and-plan-evolutio* (last accessed March 27, 2016); Calif. Ins. Dept. Assessment at 6 (San Francisco); Cal. Ins. Dept. Assessment at 7 (University of California). San Francisco did charge an additional amount when it first removed exclusions for transgender-related health care in 2001, but removed the surcharges altogether in 2006, presumably because they were unnecessary as costs were *de minimis.*

[222] Williams Institute Study, *supra* note 212, at 2. Although it is a very small and nonrandom sample—with responses from only 34 employers—this is the only publicly available study that includes data on the costs to private employers of providing nondiscriminatory health-care insurance. The employers that responded to the Williams Institute survey ranged in size from fewer than 1,000 employees to 50,000 or more employees; their health-benefits plans included self-insured, fully insured, and managed care/HMO plans. *Id.* at 7, 8.

[223] *Id.* at 2.

[224] *Id.* at 11.

[225] *Id.*

[226] DOD Study at 1090.

Study—but in neither case does the record show that there was an associated increase in cost. Thus, OFCCP does not believe that an increase in demand that is significant enough to affect the cost of nondiscriminatory health-care benefits is likely. The California Insurance Department considered this issue as well, and despite expecting "a possible spike in demand for such [benefits] in the first few years . . . due to the possible existence of some current unmet demand," it similarly concluded that any increased utilization that might occur over time was likely to be so low that any resulting costs remained actuarially immaterial.[227]

Sections 60–20.7–60–20.8

Section 60–20.7, titled "Employment decisions made on the basis of sex-based stereotypes," explains the prohibition against making employment decisions based on sex stereotypes, which the Supreme Court recognized in 1989 as a form of sex discrimination under title VII. This section clarifies that such discrimination includes disparate treatment based on nonconformity to gender norms and expectations. To the three paragraphs in the proposed rule, covering sex stereotypes about dress, appearance, and behavior (paragraph 60–20.7(a)), gender identity (paragraph 60–20.7(b)), and caregiving responsibilities (proposed rule paragraph 60–20.7(c), renumbered in the final rule to paragraph 60–20.7(d)), the final rule adds a fourth, covering sex stereotypes about the jobs, sectors, or industries appropriate for women to work in (final rule paragraph 60–20.7(c)). As such, the final rule reflects the current state of title VII law with regard to sex-based stereotyping, imposing no additional burden on contractors covered both by E.O. 11246 and by title VII or state or local laws that similarly prohibit sex discrimination and have lower coverage thresholds. As to the remaining contractors, those that have fewer than 15 employees as defined by title VII, are not covered by state or local laws, and have at least $10,000 in Federal contracts or subcontracts, as noted in the discussion of this requirement elsewhere in the preamble, OFCCP's publicly available FCCM has put them on notice that OFCCP follows current law with regard to sex-based stereotyping. The FCCM provides that:

> [Compliance Officers (COs)] must examine whether contractor policies make prohibited distinctions in conditions of employment based on sex, including the basis of pregnancy, childbirth or related medical conditions, or on the basis of sex-based stereotypes, including those related to actual or perceived caregiver responsibilities. Contractors must not make employment decisions based on stereotypes about how males and females are "supposed" to look or act. Such employment decisions are a form of sex discrimination prohibited by Executive Order 11246, as amended.

FCCM, ch. 2, section 2H00(a).[228] Thus, for these contractors as well, the final rule imposes no additional burden and generates no new benefits for their employees.[229]

Section 60–20.8 of the final rule, titled "Harassment and hostile work environments," explains the circumstances under which sex-based harassment and hostile work environments violate the Executive Order, reflecting principles established in EEOC Guidelines adopted in 1980 and Supreme Court title VII decisions beginning in 1986. This section clarifies that such discrimination includes "sexual harassment (including harassment based on gender identity or expression), harassment based on pregnancy, childbirth, or related medical conditions," and sex-based harassment that is not sexual in nature but that is because of sex or sex-based stereotypes. In addition, the Appendix includes a section describing best practices that contractors may follow to reduce and eliminate harassment and hostile work environments.

One commenter asserts that there would be burdens for complying with this requirement, explaining that there would be costs for establishing and maintaining procedures, records, and internal compliance assessments. The equal opportunity clause has always prohibited discrimination, including harassment and hostile work environments. The update proposed in the NPRM and finalized with this rule does not create any additional burdens. In fact, the section reflects the current state of title VII law with regard to sex-based harassment and hostile work environments, imposing no additional burden on contractors covered both by E.O. 11246 and by title VII or state or local laws that similarly prohibit sex discrimination and have lower coverage thresholds. As to the remaining contractors, those that have fewer than 15 employees as defined by title VII, are not covered by state or local laws, and have at least $10,000 in Federal contracts or subcontracts, as noted in the discussion of this requirement elsewhere in the preamble, OFCCP's publicly available FCCM has put them on notice that OFCCP follows current law with regard to sex-based harassment and hostile work environments. The FCCM provides that:

> Although not specifically mentioned in the *Guidelines,* sexual harassment, as well as harassment based on race, color, national origin or religion is a violation of the nondiscrimination provisions of EO 11246. During the onsite review, COs must be alert for any indications of such harassment. OFCCP follows Title VII principles when determining whether sexual harassment has occurred.

FCCM, Chapter 2, Section 2H01(d). Thus, for these contractors as well, the final rule imposes no additional burden and generates no new benefits for their employees.

Summary: Cost of Provisions

The total cost to contractors of the regulation in the first year is, thus, estimated at a maximum of $51,273,500, or $103 per contractor company. Below, in Table 1, is a summary of the hours and costs.

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[227] Cal. Ins. Dept. Assessment at 9.

[228] Another section of the FCCM also covers sex-based stereotyping:

> *Sex-Based Stereotyping and Caregiver Discrimination.* Differential treatment for an employment-related purpose based on sex-based stereotypes, including those related to actual or perceived caregiving responsibilities, is a violation of Title VII of the Civil Rights Act of 1964. For example, it is prohibited to deny advancement opportunities to similarly situated mothers that are provided to fathers or women without children, based on stereotypes about mothers in the workplace; it is also prohibited to deny to fathers access to family-friendly policies like workplace flexibility that employers provide to mothers, based on stereotypes about fathers' roles in care giving.

FCCM, ch. 2, section 2H01(e).

[229] One commenter asserts that this section, as well, is so "new or . . . thoroughly revised" that cost estimates for it are required. OFCCP disagrees with this assertion. The Supreme Court recognized sex stereotyping as a form of sex discrimination in 1989.

TABLE 1—NEW REQUIREMENTS

Section	Hours	Total cost	Per contractor
Estimated One-Time Burden:			
Regulatory Familiarization	750,000	$41,602,500	$83
Total One-Time Burden	750,000	41,602,500	83
Estimated Annual Recurring Cost:			
41 CFR 60–20.5: Light duty or accommodation (maximum)	0	9,671,000	19
Total Annual Recurring Cost (maximum)	0	9,671,000	19
Total Cost (maximum)	750,000	51,273,500	[230]103

Summary of Transfer and Benefits

E.O. 13563 recognizes that some rules have benefits that are difficult to quantify or monetize, but are, nevertheless, important, and states that agencies may consider such benefits. In fact, in its comment, one industry organization criticizes OFCCP for not attempting to monetize the benefits of the proposed rule, and urges OFCCP "to assign a monetary value (*e.g.*, increased earnings, improved productivity, recovered denied wages) to the regulatory benefit." The final rule creates equity and fairness benefits, which are explicitly recognized in E.O. 13563. Prohibiting discrimination in employment based on sex can contribute to ensuring that qualified and productive employees, both female and male, receive fair compensation, employment opportunities, and terms and conditions of employment. That effect may generate a transfer of value to employees from employers (if additional wages are paid out of profits) or from taxpayers (if contractor fees increase to pay higher wages to employees). OFCCP designed the final rule to achieve these benefits by:

- Supporting more effective enforcement of the prohibitions against sex-based discrimination in employment;
- Providing clearer guidance and harmonizing existing regulations, improving contractors' and their employees' understanding of the requirements;
- Increasing employees' and applicants' understanding of their rights in the workforce.

Social science research suggests antidiscrimination law can have broad social benefits, not only to those workers who are explicitly able to mobilize their rights and obtain redress, but also to the workforce and the economy as a whole. In general, discrimination is incompatible with an efficient labor market. Discrimination interferes with the ability of workers to find jobs that match their skills and abilities and to obtain wages consistent with a well-functioning marketplace.[231] Discrimination may reflect market failure, where collusion or other anti-egalitarian practices allow majority group members to shift the costs of discrimination to minority group members.[232]

For this reason, effective nondiscrimination enforcement can promote economic efficiency and growth. For example, a number of scholars have documented the benefits of the civil rights movement and the adoption of title VII on the economic prospects of workers and the larger economy.[233] One recent study estimated that improved workforce participation by women and minorities, including through adoption of civil rights laws and changing social norms, accounts for 15–20 percent of aggregate wage growth between 1960 and 2008.[234] Positive impacts of this rule, which only applies to Federal contractors and only affects discrimination based on sex, would necessarily be smaller than the impacts of major society-wide phenomena such as the civil rights movement as a whole.

More specifically, concrete benefits arise from the provisions of the final rule disallowing discrimination based on gender identity and sex stereotyping involving sexual orientation. Research specifically on corporate policies prohibiting employment discrimination on these bases has found that employers—including federal contractors—adopt such policies because they benefit the employers in multiple ways. Of the 41 top 50 federal contractors that had adopted such nondiscrimination policies or extended health-insurance benefits to their employees' same-sex domestic partners as of 2011, fully 88 percent made public statements to the effect that "policies promoting employee diversity in general are good for their bottom line" or otherwise "linked diversity to corporate success."[235] The most commonly cited specific benefits of workplace policies that benefit LGBT employees were in the areas of improving recruitment and retention of talented employees (and thus improving company competitiveness); promoting innovation through a workforce reflecting diverse perspectives; providing better service to a diverse customer base; and boosting employee morale and thus productivity.[236]

Particularly with regard to nondiscriminatory health-care benefits for transgender individuals, the California Insurance Department reviewed relevant research and concluded that eliminating discrimination will result in lower costs for insurance companies and employers for other treatments that employees whose claims are denied on the basis of their transgender status commonly need.[237] The conditions for which these treatments are needed, and for which the California Insurance Department predicted reduced need if gender nondiscriminatory health-care coverage were available, include complications arising from suicide attempts, mental illness, substance abuse, and HIV.[238] As one transgender man explained,

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[230] The estimated per-contractor one-time burden and the annual recurring cost do not sum to $103 due to rounding.

[231] Shelley J. Lundberg & Richard Starz, "Private Discrimination and Social Intervention in Competitive Labor Markets," 73 *American Economic Review* 340 (1983), *available at http://www.jstor.org/stable/pdf/1808117.pdf?acceptTC=true* (last accessed June 3, 2015); Dennis J. Aigner & Glen G. Cain, "Statistical Theories of Discrimination in Labor Markets," 30 *Industrial and Labor Relations Review* 175 (1977), *available at http://econ2.econ.iastate.edu/classes/econ321/rosburg/Aigner%20and%20Cain%20-%20Statistical%20Theories%20of%20Discrimination%20in%20Labor%20Markets.pdf* (last accessed June 3, 2015).

[232] Kenneth J. Arrow, "What Has Economics to Say about Racial Discrimination?" 12 *Journal of Economic Perspectives* 91 (1998), *available at http://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.12.2.91* (last accessed June 3, 2015).

[233] J. Hoult Verkerke, "Free to Search," 105 *Harvard Law Review* 2080 (1992); James J. Heckman and Brook S. Payner, "Determining the Impact of Federal Anti-Discrimination Policy on the Economic Status of Blacks: A Study of South Carolina," 79 *American Economic Review* 138 (1989).

[234] Hsieh, C., Hurst, E. Jones, C.I., Klenow, P.J. "The Allocation of Talent and U.S. Economic Growth," NBER Working Paper (2013), *available at http://klenow.com/HHJK.pdf* (last accessed June 3, 2015).

[235] B. Sears and C. Mallory, Williams Institute, "Economic Motives for Adopting LGBT-Related Workplace Policies" (Williams Institute October 2011) 2, 7, *available at http://williamsinstitute.law.ucla.edu/research/workplace/economic-motives-for-adopting-lgbt-related-workplace-policies/* (last accessed February 13, 2016). The federal contractors were the 50 prime contractors with the greatest contract award amounts in FY 2009. *Id.* at 3.

[236] *Id.* at 5–6.

> People who need [treatments for gender transition] but don't have access to them can end up costing their companies a lot in terms of being treated for depression and stress-related illnesses. [After undergoing reassignment surgery,] my costs related to migraine treatment and . . . prescription drugs . . . dropped dramatically. My healthcare costs went from being well-above average for my plan to well-below average in the first full year after my transition.[239]

The Insurance Department "determined that the benefits of eliminating discrimination far exceed the insignificant costs associated with implementation of the proposed regulation [requiring nondiscriminatory health-care coverage]." [240]

Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, as amended, requires agencies to prepare regulatory flexibility analyses and make them available for public comment when proposing regulations that will have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. If the rule is not expected to have a significant economic impact on a substantial number of small entities, the RFA allows an agency to certify such in lieu of preparing an analysis. *See* 5 U.S.C. 605. As explained in the Regulatory Flexibility Act and Executive Order 13272 section of the NPRM, OFCCP did not expect the proposed rule to have a significant economic impact on a substantial number of small entities. 80 FR at 5266 (January 30, 2015). However, in the interest of transparency and to provide an opportunity for public comment, OFCCP prepared an initial regulatory flexibility analysis (IRFA) rather than certify that the proposed rule was not expected to have a significant economic impact on a substantial number of small entities. In the proposed rule OFCCP specifically requested comments on the initial RFA, including the number of small entities affected by the proposed rule, the compliance cost estimates, and whether alternatives exist that will reduce burden on small entities while still remaining consistent with the objective. While OFCCP received 27 comments that addressed the costs and burdens of the proposed rules, none commented on the initial regulatory flexibility analysis. Thus, as explained below, OFCCP adopts the proposed rule's initial RFA economic analysis for purposes of the final rule and adjusts it to reflect the increased cost of the final rule.

In the NPRM, OFCCP estimated the impact on small entities that are covered contractors of complying with the proposed rule's requirements. In this final rule, OFCCP certifies that this rule will not have a significant economic impact on a substantial number of small entities. In making this certification, OFCCP determines that all small entities subject to E.O. 11246 would be required to comply with all of the provisions of the final rule and that the compliance cost would be approximately $103 per contractor. The compliance requirements are more fully described above in other portions of this preamble. The following discussion analyzes the cost of complying with the final rule.

In estimating the annual economic impact of this rule on the economy, OFCCP determined the compliance cost of the rule and whether the costs would be significant for a substantial number of small contractor firms (*i.e.*, small business firms that enter into contracts with the Federal Government). If the estimated compliance costs for affected small contractor firms are less than three percent of small contractor firms' revenues, OFCCP considered it appropriate to conclude that this rule will not have a significant economic impact on the small contractor firms covered by the final rule. While OFCCP chose three percent as the significance criterion, using this benchmark as an indicator of significant impact may overstate the impact, because the costs associated with prohibiting sex discrimination against employees and job applicants are expected to be mitigated to some degree by the benefits of the rule. As discussed above in the Summary of Transfers and Benefits section of the preamble, the benefits may include fair compensation, employment opportunities, and terms and conditions of employment, as well as a more efficient labor market and ultimately, improved economic prospects for workers and for the larger economy.

The data sources used in the analysis of small business impact are the Small Business Administration's (SBA) Table of Small Business Size Standards,[241] the Current Population Survey (CPS), and the U.S. Census Bureau's Statistics of U.S. Businesses (SUSB).[242] Because contractors are not limited to specific industries, OFCCP assesses the impact of the rule across the 19 industrial classifications.[243] Because data limitations do not allow OFCCP to determine which of the small firms within these industries are contractors, OFCCP assumes that these small firms are not significantly different from the small contractors that will be directly affected by the rule.

OFCCP takes the following steps to estimate the cost of the rule per small contractor firm as measured by a percentage of the total annual receipts. First, OFCCP uses Census SUSB data that disaggregates industry information by firm size in order to perform a robust analysis of the impact on small contractor firms. OFCCP applies the SBA small business size standards to the SUSB data to determine the number of small firms in the affected industries. Then OFCCP uses receipts data from the SUSB to calculate the cost per firm as a percent of total receipts by dividing the estimated annual cost per firm by the average annual receipts per firm. This methodology is applied to each of the industries. The results are presented by industry in the summary tables below *(Tables 2–20).*

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[237] Cal. Ins. Dept. Assessment at 9.

[238] *Id.* at 9–12.

[239] A. McIlvaine, "A New Benefits Trend," Human Resources Executive Online (October 8, 2012), available at *http://www.hreonline.com/HRE/view/story.jhtml?id=533351347* (last accessed March 18, 2016) (quoting Andre Wilson).

[240] Cal. Ins. Dept. Assessment at 9.

[241] U.S. Small Business Administration, Office of Advocacy, "Firm Size Data, Statistics of U.S. Businesses, Business Dynamics Statistics, Business Employment Dynamics, and Nonemployer Statistics," *available at http://www.sba.gov/advocacy/849/12162#susb* (last accessed June 2, 2015).

[242] U.S. Census Bureau, Statistics of U.S. Businesses, "Latest SUSB Annual Data," *available at http://www.census.gov/econ/susb/* (last accessed June 2, 2015).

[243] Agriculture, Forestry, Fishing, and Hunting Industry (North American Industry Classification System (NAICS) 11, Mining NAICS 21, Utilities NAICS 22, Construction NAICS 23, Manufacturing, NAICS 31–33, Wholesale Trade NAICS 42, Retail Trade NAICS 44–45, Transportation and Warehousing NAICS 48–49, Information NAICS 51, Finance and Insurance NAICS 52, Real Estate and Rental and Leasing NAICS 53, Professional, Scientific, and Technical Services NAICS 54, Management of Companies and Enterprises NAICS 55, Administrative and Support and Waste Management and Remediation Services NAICS 56, Educational Services NAICS 61, Healthcare and Social Assistance NAICS 62, Arts, Entertainment, and Recreation NAICS 71, Accommodation and Food Services NAICS 72, Other Services NAICS 81.

Table 2. Agriculture, Forestry, Fishing, and Hunting

Small Business Size Standard: $0.75 million – $27.5

	Number of Firms	Total of	Average Number of Employees per Firm[1]	Annual per	Annual Receipts	Average Receipts per Firm [2]	Annual per Firm Percent Receipt [3]
Firms below	4,288	N/	N/A	$103	$215,803,000	$50,327	0.20%
Firms with sales/receipts/revenue $100,000 to	7,985	17,528	2.2	$103	$2,005,870,000	$251,205	0.04%
Firms with sales/receipts/revenue $500,000 to	3,399	15,047	4.4	$103	$2,437,918,000	$717,246	0.01%
Firms with sales/receipts/revenue $1,000,000 to	3,335	27,068	8.1	$103	$5,192,149,000	$1,556,866	0.01%
Firms with sales/receipts/revenue $2,500,000 to	1,213	19,223	15.8	$103	$4,210,314,000	$3,470,993	0.00%
Firms with sales/receipts/revenue $5,000,000 to	351	9,393	26.8	$103	$2,067,573,000	$5,890,521	0.00%
Firms with sales/receipts/revenue $7,500,000-	210	7,143	34.0	$103	$1,736,374,000	$8,268,448	0.00%
Firms with sales/receipts/revenue $10,000,000 to	191	10,526	55.1	$103	$2,198,845,000	$11,512,277	0.00%
Firms with sales/receipts/revenue $15,000,000 to	79	5,883	74.5	$103	$1,226,159,000	$15,521,000	0.00%
Firms with sales/receipts/revenue $20,000,000 to	29	2,399	82.7	$103	$617,304,000	$21,286,345	0.00%
Firms with sales/receipts/revenue $25,000,000 to	29	2,108	72.7	$103	$627,438,000	$21,635,793	0.00%

N/A = not available, not

[1] In the case of agriculture, forestry, fishing, and hunting firms with receipts of $100,000 to $499,999, the average number of employees per firm (2.2) derived by dividing the total number of employees (17,528) by the number of firms

[2] In the case of agriculture, forestry, fishing, and hunting firms with receipts of $100,000 to $499,999, the average receipts per firm ($251,205) was derived dividing the total annual receipts ($2,005,870,000) by the number of firms

[3] In the case of agriculture, forestry, fishing, and hunting firms with receipts of $100,000 to $499,999, the annual cost per firm as a percent of receipts percent) was derived by dividing the annual cost per firm ($102) by the average receipts per firm

Table 3. Mining Industry

Small Business Size Standard: 250 – 1,500 employees

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm[1]	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm [2]	Annual Cost per Firm as Percent of Receipts [3]
Firms with 0-4 employees	12,686	20,347	1.6	$103	$9,811,191,000	$773,387	0.01%
Firms with 5-9 employees	3,256	21,571	6.6	$103	$7,696,826,000	$2,363,890	0.00%
Firms with 10-19 employees	2,426	32,884	13.6	$103	$12,472,042,000	$5,140,990	0.00%
Firms with 20-99 employees	2,677	102,569	38.3	$103	$39,167,488,000	$14,631,112	0.00%
Firms with 100-499 employees	735	116,980	159.2	$103	$57,968,047,000	$78,868,091	0.00%
Firms with 500+ employees[4]	369	433,275	1,174.2	$103	$428,416,777,000	$1,161,021,076	0.00%

[1] In the case of mining firms with 0-4 employees, the average number of employees per firm (1.6) was derived by dividing the total number of employees (20,347) by the number of firms (12,686).

[2] In the case of mining firms with 0-4 employees, the average receipts per firm ($773,387) was derived by dividing the total annual receipts ($9,811,191,000) by the number of firms (12,686).

[3] In the case of mining firms with 0-4 employees, the annual cost per firm as a percent of receipts (0.01 percent) was derived by dividing the annual cost per firm ($103) by the average receipts per firm ($773,387).

[4] The small business size standard for several subsectors within the mining industry is 750, 1,000, 1,250, or 1,500 employees; however, data are not disaggregated for firms with more than 500 employees.

Table 4. Utilities Industry

Small Business Size Standard: 250 – 1,000 employees

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with 0-4 employees	3,072	5,939	1.9	$103	$4,148,617,000	$1,350,461	0.01%
Firms with 5-9 employees	984	6,330	6.4	$103	$2,094,449,000	$2,128,505	0.00%
Firms with 10-19 employees	500	6,670	13.3	$103	$4,464,945,000	$8,929,890	0.00%
Firms with 20-99 employees	904	40,677	45.0	$103	$37,395,431,000	$41,366,627	0.00%
Firms with 100-499 employees	314	52,009	165.6	$103	$50,719,290,000	$161,526,401	0.00%
Firms with 500+ employees[1]	199	529,438	2,660.5	$103	$432,375,983,000	$2,172,743,633	0.00%

[1] The small business size standard for several subsectors within the utilities industry is 750 or 1,000 employees; however, data are not disaggregated for firms with more than 500 employees.

Table 5. Construction Industry

Small Business Size Standard: $15 million – $36.5 million

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	119,538	N/A	N/A	$103	$6,116,019,000	$51,164	0.20%
Firms with sales/receipts/revenue of $100,000 to $499,999	262,870	569,763	2.2	$103	$67,195,728,000	$255,623	0.04%
Firms with sales/receipts/revenue of $500,000 to $999,999	100,006	466,370	4.7	$103	$70,808,134,000	$708,039	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	85,343	742,370	8.7	$103	$133,337,229,000	$1,562,369	0.01%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	35,670	585,723	16.4	$103	$123,598,328,000	$3,465,050	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	12,306	327,911	26.6	$103	$74,430,329,000	$6,048,296	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	6,179	214,777	34.8	$103	$52,933,597,000	$8,566,693	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	6,752	299,412	44.3	$103	$80,939,071,000	$11,987,422	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	3,272	190,075	58.1	$103	$55,527,769,000	$16,970,590	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	2,002	136,366	68.1	$103	$43,498,052,000	$21,727,299	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	1,365	107,700	78.9	$103	$36,048,227,000	$26,408,958	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	909	80,081	88.1	$103	$28,368,318,000	$31,208,271	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	638	64,770	101.5	$103	$22,506,667,000	$35,276,908	0.00%

N/A = not available, not disclosed

Table 6. Manufacturing Industry

Small Business Size Standard: 500 – 1,500 employees

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with 0-4 employees	106,932	199,847	1.9	$103	$46,408,019,000	$433,996	0.02%
Firms with 5-9 employees	47,612	317,445	6.7	$103	$52,345,651,000	$1,099,421	0.01%
Firms with 10-19 employees	38,564	526,660	13.7	$103	$94,946,327,000	$2,462,046	0.00%
Firms with 20-99 employees	47,443	1,939,710	40.9	$103	$454,441,177,000	$9,578,677	0.00%
Firms with 100-499 employees	12,186	2,103,243	172.6	$103	$683,068,069,000	$56,053,510	0.00%
Firms with 500+ employees[1]	3,626	6,105,138	1,683.7	$103	$4,399,024,641,000	$1,213,189,366	0.00%

[1] The small business size standard for many subsectors within the manufacturing industry is 750, 1,000, 1,250, or 1,500 employees; however, data are not disaggregated for firms with more than 500 employees.

Table 7. Wholesale Trade Industry

Small Business Size Standard: 100 – 250 employees

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with 0-4 employees	180,049	305,056	1.7	$103	$319,323,324,000	$1,773,536	0.01%
Firms with 5-9 employees	53,703	353,848	6.6	$103	$263,541,607,000	$4,907,391	0.00%
Firms with 10-19 employees	36,049	481,671	13.4	$103	$359,184,882,000	$9,963,796	0.00%
Firms with 20-99 employees	34,536	1,276,022	36.9	$103	$1,024,608,963,000	$29,667,853	0.00%
Firms with 100-499 employees	7,737	1,023,919	132.3	$103	$1,085,384,946,000	$140,284,987	0.00%

Table 8. Retail Trade Industry

Small Business Size Standard: $7.5 million – $38.5 million

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	79,415	N/A	N/A	$103	$4,142,505,000	$52,163	0.20%
Firms with sales/receipts/revenue of $100,000 to $499,999	226,195	597,967	2.6	$103	$61,192,802,000	$270,531	0.04%
Firms with sales/receipts/revenue of $500,000 to $999,999	115,616	539,126	4.7	$103	$82,552,882,000	$714,026	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	115,103	885,466	7.7	$103	$181,435,583,000	$1,576,289	0.01%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	53,905	673,056	12.5	$103	$187,480,866,000	$3,477,987	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	19,139	359,417	18.8	$103	$114,151,432,000	$5,964,336	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	9,110	234,666	25.8	$103	$76,658,889,000	$8,414,807	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	9,236	317,056	34.3	$103	$107,103,037,000	$11,596,258	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	4,647	204,846	44.1	$103	$75,536,677,000	$16,254,934	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	3,079	162,942	52.9	$103	$63,579,375,000	$20,649,359	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	2,115	126,196	59.7	$103	$53,042,313,000	$25,079,108	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	1,709	122,481	71.7	$103	$50,891,275,000	$29,778,394	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	1,333	104,722	78.6	$103	$45,330,650,000	$34,006,489	0.00%

N/A = not available, not disclosed

Table 9. Transportation and Warehousing Industry

Small Business Size Standard: $7.5 million – $38.5 million

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	34,560	N/A	N/A	$103	$1,675,127,000	$48,470	0.21%
Firms with sales/receipts/revenue of $100,000 to $499,999	66,204	164,298	2.5	$103	$16,175,517,000	$244,328	0.04%
Firms with sales/receipts/revenue of $500,000 to $999,999	23,100	142,743	6.2	$103	$16,279,203,000	$704,727	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	20,675	243,088	11.8	$103	$32,036,433,000	$1,549,525	0.01%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	9,236	207,533	22.5	$103	$31,579,320,000	$3,419,155	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	3,715	128,002	34.5	$103	$21,532,906,000	$5,796,206	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,991	93,148	46.8	$103	$15,968,571,000	$8,020,377	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	2,038	122,894	60.3	$103	$21,945,352,000	$10,768,082	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,089	88,025	80.8	$103	$15,508,043,000	$14,240,627	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	706	67,974	96.3	$103	$12,389,543,000	$17,548,928	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	485	56,730	117.0	$103	$10,263,306,000	$21,161,456	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	348	42,232	121.4	$103	$8,074,953,000	$23,203,888	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	273	39,751	145.6	$103	$6,355,335,000	$23,279,615	0.00%

N/A = not available, not disclosed

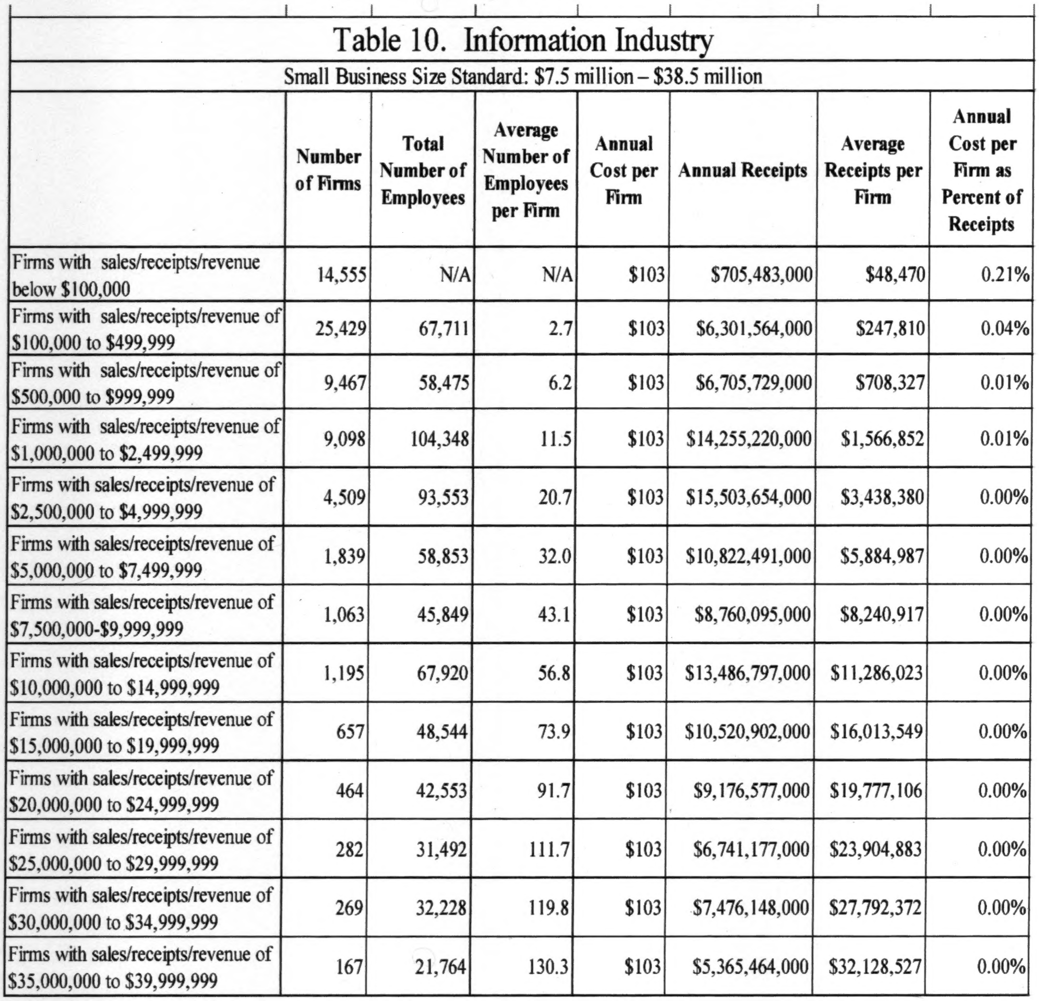

Table 10. Information Industry

Small Business Size Standard: $7.5 million – $38.5 million

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	14,555	N/A	N/A	$103	$705,483,000	$48,470	0.21%
Firms with sales/receipts/revenue of $100,000 to $499,999	25,429	67,711	2.7	$103	$6,301,564,000	$247,810	0.04%
Firms with sales/receipts/revenue of $500,000 to $999,999	9,467	58,475	6.2	$103	$6,705,729,000	$708,327	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	9,098	104,348	11.5	$103	$14,255,220,000	$1,566,852	0.01%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	4,509	93,553	20.7	$103	$15,503,654,000	$3,438,380	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	1,839	58,853	32.0	$103	$10,822,491,000	$5,884,987	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,063	45,849	43.1	$103	$8,760,095,000	$8,240,917	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,195	67,920	56.8	$103	$13,486,797,000	$11,286,023	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	657	48,544	73.9	$103	$10,520,902,000	$16,013,549	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	464	42,553	91.7	$103	$9,176,577,000	$19,777,106	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	282	31,492	111.7	$103	$6,741,177,000	$23,904,883	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	269	32,228	119.8	$103	$7,476,148,000	$27,792,372	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	167	21,764	130.3	$103	$5,365,464,000	$32,128,527	0.00%

Table 11. Finance and Insurance Industry

Small Business Size Standard: $7.5 million – $38.5 million

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	50,093	N/A	N/A	$103	$2,466,932,000	$49,247	0.21%
Firms with sales/receipts/revenue of $100,000 to $499,999	108,248	259,664	2.4	$103	$27,228,139,000	$251,535	0.04%
Firms with sales/receipts/revenue of $500,000 to $999,999	30,194	145,543	4.8	$103	$20,834,656,000	$690,026	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	20,617	181,810	8.8	$103	$31,648,935,000	$1,535,089	0.01%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	8,743	158,845	18.2	$103	$30,321,167,000	$3,468,051	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	3,900	108,367	27.8	$103	$23,230,029,000	$5,956,418	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	2,292	88,271	38.5	$103	$19,151,469,000	$8,355,789	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	2,594	134,488	51.8	$103	$30,393,812,000	$11,716,967	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,437	95,832	66.7	$103	$23,632,362,000	$16,445,624	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	925	76,347	82.5	$103	$19,240,191,000	$20,800,206	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	632	68,829	108.9	$103	$16,235,520,000	$25,689,114	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	532	60,193	113.1	$103	$15,593,649,000	$29,311,370	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	387	48,800	126.1	$103	$13,302,624,000	$34,373,705	0.00%

N/A = not available, not disclosed

Table 12. Real Estate and Rental and Leasing Industry

Small Business Size Standard: $7.5 million – $38.5 million

	Number of Firms	**Total Number of Employees**	**Average Number of Employees per Firm**	**Annual Cost per Firm**	**Annual Receipts**	**Average Receipts per Firm**	**Annual Cost per Firm as Percent of Receipts**
Firms with sales/receipts/revenue below $100,000	69,381	N/A	N/A	$103	$3,496,398,000	$50,394	0.20%
Firms with sales/receipts/revenue of $100,000 to $499,999	115,993	251,175	2.2	$103	$28,401,383,000	$244,854	0.04%
Firms with sales/receipts/revenue of $500,000 to $999,999	37,145	169,892	4.6	$103	$26,133,483,000	$703,553	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	27,705	239,062	8.6	$103	$42,364,031,000	$1,529,111	0.01%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	9,488	165,022	17.4	$103	$31,946,434,000	$3,367,036	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	3,047	86,769	28.5	$103	$17,503,088,000	$5,744,368	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,528	58,727	38.4	$103	$11,926,523,000	$7,805,316	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,476	69,231	46.9	$103	$15,748,767,000	$10,669,896	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	789	49,475	62.7	$103	$11,156,616,000	$14,140,198	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	485	33,800	69.7	$103	$8,191,383,000	$16,889,449	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	347	27,443	79.1	$103	$7,110,513,000	$20,491,392	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	260	25,368	97.6	$103	$6,117,119,000	$23,527,381	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	183	17,798	97.3	$103	$4,704,982,000	$25,710,284	0.00%

N/A = not available, not disclosed

Table 13. Professional, Scientific and Technical Services Industry

Small Business Size Standard: $7.5 million – $38.5 million

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	193,388	N/A	N/A	$103	$9,558,991,000	$49,429	0.21%
Firms with sales/receipts/revenue of $100,000 to $499,999	339,688	750,314	2.2	$103	$82,115,768,000	$241,739	0.04%
Firms with sales/receipts/revenue of $500,000 to $999,999	99,575	524,326	5.3	$103	$70,218,001,000	$705,177	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	77,769	785,957	10.1	$103	$119,889,375,000	$1,541,609	0.01%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	29,032	578,392	19.9	$103	$99,939,437,000	$3,442,389	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	10,314	339,687	32.9	$103	$61,531,502,000	$5,965,823	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	5,300	240,552	45.4	$103	$44,308,266,000	$8,360,050	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	5,195	304,723	58.7	$103	$59,665,120,000	$11,485,105	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	2,608	211,885	81.2	$103	$41,368,442,000	$15,862,133	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	1,605	159,832	99.6	$103	$32,088,646,000	$19,992,926	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	1,046	122,102	116.7	$103	$25,225,025,000	$24,115,703	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	752	94,344	125.5	$103	$20,975,584,000	$27,893,064	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	522	81,816	156.7	$103	$16,142,861,000	$30,925,021	0.00%

N/A = not available, not disclosed

Table 14. Management of Companies and Enterprises Industry

Small Business Size Standard: $20.5 million

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	1,107	7,938	7.2	$103	$33,849,000	$30,577	0.34%
Firms with sales/receipts/revenue of $100,000 to $499,999	1,216	4,631	3.8	$103	$251,252,000	$206,622	0.05%
Firms with sales/receipts/revenue of $500,000 to $999,999	743	5,764	7.8	$103	$285,686,000	$384,503	0.03%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	1,668	17,384	10.4	$103	$783,830,000	$469,922	0.02%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	2,016	26,218	13.0	$103	$1,395,007,000	$691,968	0.01%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	1,602	26,210	16.4	$103	$1,567,547,000	$978,494	0.01%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,229	22,064	18.0	$103	$1,528,733,000	$1,243,884	0.01%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,969	42,504	21.6	$103	$2,727,035,000	$1,384,985	0.01%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,454	36,455	25.1	$103	$2,687,284,000	$1,848,201	0.01%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	1,114	27,887	25.0	$103	$2,617,195,000	$2,349,367	0.00%

Table 15. Administrative and Support, Waste Management and Remediation Services Industry

Small Business Size Standard: $5.5 million – $38.5 million

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	93,960	126,543	1.3	$103	$4,409,293,000	$46,927	0.22%
Firms with sales/receipts/revenue of $100,000 to $499,999	132,326	477,646	3.6	$103	$32,162,760,000	$243,057	0.04%
Firms with sales/receipts/revenue of $500,000 to $999,999	40,136	379,760	9.5	$103	$28,185,706,000	$702,255	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	31,696	672,031	21.2	$103	$48,905,893,000	$1,542,967	0.01%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	12,452	584,765	47.0	$103	$42,271,882,000	$3,394,787	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	4,523	373,053	82.5	$103	$26,193,931,000	$5,791,274	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	2,373	271,117	114.3	$103	$19,082,571,000	$8,041,539	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	2,522	387,341	153.6	$103	$27,561,427,000	$10,928,401	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,313	270,010	205.6	$103	$18,902,442,000	$14,396,376	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	892	216,790	243.0	$103	$15,644,955,000	$17,539,187	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	601	196,440	326.9	$103	$12,764,154,000	$21,238,193	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	456	164,713	361.2	$103	$10,696,102,000	$23,456,364	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	311	139,531	448.7	$103	$8,205,878,000	$26,385,460	0.00%

Table 16. Educational Services Industry

Small Business Size Standard: $7.5 million – $38.5 million

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	22,232	45,228	2.0	$103	$1,042,922,000	$46,911	0.22%
Firms with sales/receipts/revenue of $100,000 to $499,999	32,128	175,610	5.5	$103	$7,838,923,000	$243,990	0.04%
Firms with sales/receipts/revenue of $500,000 to $999,999	9,530	123,920	13.0	$103	$6,717,924,000	$704,924	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	8,735	216,317	24.8	$103	$13,846,119,000	$1,585,131	0.01%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	4,716	216,842	46.0	$103	$16,353,734,000	$3,467,713	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	1,966	142,665	72.6	$103	$11,510,807,000	$5,854,937	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,028	96,347	93.7	$103	$8,493,535,000	$8,262,194	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,113	138,383	124.3	$103	$12,679,800,000	$11,392,453	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	542	87,214	160.9	$103	$8,194,214,000	$15,118,476	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	388	70,422	181.5	$103	$7,566,005,000	$19,500,013	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	255	61,634	241.7	$103	$6,166,517,000	$24,182,420	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	202	57,698	285.6	$103	$5,824,708,000	$28,835,188	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	191	61,907	324.1	$103	$6,200,412,000	$32,462,890	0.00%

Table 17. Health Care and Social Assistance Industry

Small Business Size Standard: $7.5 million – $38.5 million

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	110,259	162,885	1.5	$103	$5,260,895,000	$47,714	0.22%
Firms with sales/receipts/revenue of $100,000 to $499,999	249,219	1,010,642	4.1	$103	$67,642,299,000	$271,417	0.04%
Firms with sales/receipts/revenue of $500,000 to $999,999	128,577	1,073,376	8.3	$103	$90,967,720,000	$707,496	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	91,324	1,576,609	17.3	$103	$138,206,644,000	$1,513,366	0.01%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	28,520	1,156,550	40.6	$103	$98,200,090,000	$3,443,201	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	10,167	729,810	71.8	$103	$60,941,395,000	$5,994,039	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	5,380	556,088	103.4	$103	$45,627,101,000	$8,480,874	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	5,700	785,047	137.7	$103	$67,302,238,000	$11,807,410	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	2,953	556,945	188.6	$103	$48,758,779,000	$16,511,608	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	1,642	384,059	233.9	$103	$34,859,152,000	$21,229,691	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	1,139	318,772	279.9	$103	$29,550,252,000	$25,944,032	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	731	244,490	334.5	$103	$22,423,595,000	$30,675,233	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	579	213,048	368.0	$103	$20,384,881,000	$35,207,048	0.00%

Table 18. Arts, Entertainment, and Recreation Industry

Small Business Size Standard: $7.5 million – $38.5 million

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	29,796	43,003	1.4	$103	$1,434,271,000	$48,136	0.21%
Firms with sales/receipts/revenue of $100,000 to $499,999	46,205	177,421	3.8	$103	$11,476,438,000	$248,381	0.04%
Firms with sales/receipts/revenue of $500,000 to $999,999	16,220	161,111	9.9	$103	$11,394,483,000	$702,496	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	12,675	260,098	20.5	$103	$19,329,326,000	$1,524,996	0.01%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	4,776	205,728	43.1	$103	$16,246,680,000	$3,401,734	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	1,800	126,508	70.3	$103	$10,478,303,000	$5,821,279	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	854	78,319	91.7	$103	$6,855,951,000	$8,028,046	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	746	94,755	127.0	$103	$8,148,731,000	$10,923,232	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	373	58,407	156.6	$103	$5,452,457,000	$14,617,847	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	239	46,528	194.7	$103	$4,493,765,000	$18,802,364	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	169	36,443	215.6	$103	$3,701,048,000	$21,899,692	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	126	34,942	277.3	$103	$3,075,728,000	$24,410,540	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	83	22,145	266.8	$103	$2,382,282,000	$28,702,193	0.00%

Table 19. Accommodation and Food Services Industry

Small Business Size Standard: $7.5 million – $38.5 million

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	82,318	148,453	1.8	$103	$4,113,239,000	$49,968	0.21%
Firms with sales/receipts/revenue of $100,000 to $499,999	220,222	1,215,171	5.5	$103	$57,675,374,000	$261,897	0.04%
Firms with sales/receipts/revenue of $500,000 to $999,999	94,121	1,317,249	14.0	$103	$66,152,275,000	$702,843	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	68,299	1,935,085	28.3	$103	$102,096,727,000	$1,494,850	0.01%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	18,078	1,031,712	57.1	$103	$59,715,760,000	$3,303,228	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	4,340	417,047	96.1	$103	$24,803,758,000	$5,715,152	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,946	261,642	134.5	$103	$15,733,566,000	$8,085,080	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,924	369,182	191.9	$103	$21,512,132,000	$11,180,942	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	916	239,396	261.3	$103	$14,017,239,000	$15,302,663	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	573	198,703	346.8	$103	$11,025,439,000	$19,241,604	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	419	168,878	403.1	$103	$9,690,933,000	$23,128,718	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	306	150,087	490.5	$103	$8,385,452,000	$27,403,438	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	216	114,752	531.3	$103	$6,677,701,000	$30,915,282	0.00%

Table 20. Other Services Industry

Small Business Size Standard: $5.5 million – $38.5 million

	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	185,026	299,249	1.6	$103	$9,186,611,000	$49,650	0.21%
Firms with sales/receipts/revenue of $100,000 to $499,999	304,158	1,134,354	3.7	$103	$74,567,484,000	$245,160	0.04%
Firms with sales/receipts/revenue of $500,000 to $999,999	89,577	725,898	8.1	$103	$62,488,143,000	$697,591	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	56,956	889,426	15.6	$103	$86,073,957,000	$1,511,236	0.01%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	16,652	514,285	30.9	$103	$56,387,710,000	$3,386,242	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	5,126	244,934	47.8	$103	$29,769,491,000	$5,807,548	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	2,355	148,893	63.2	$103	$19,090,059,000	$8,106,182	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	2,177	167,628	77.0	$103	$23,959,626,000	$11,005,800	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,033	104,192	100.9	$103	$15,023,752,000	$14,543,806	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	612	68,557	112.0	$103	$11,139,647,000	$18,202,038	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	407	53,640	131.8	$103	$8,404,852,000	$20,650,742	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	290	40,754	140.5	$103	$7,311,600,000	$25,212,414	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	210	33,009	157.2	$103	$5,511,004,000	$26,242,876	0.00%

In sum, the increased cost of compliance resulting from the rule is *de minimis* relative to revenue at small contractor firms no matter their size. All of the industries have an annual cost per firm as a percent of receipts of three percent or less. For instance, the manufacturing industry cost is estimated to range from 0.00 percent for firms with 10 employees or more to 0.02 percent for firms with zero to four employees. Management of companies and enterprises is the industry with the highest relative costs, with a range of 0.00 percent for firms that have average annual receipts of $20 million–$24.99 million to 0.34 percent for firms that have average annual receipts of under $100,000. Therefore, OFCCP determines that in no instance is the effect of the rule greater than three percent of total receipts.

OFCCP then determines the number of small contractor firms actually affected by the rule. This information is not readily available. The best source for the number of small contractor firms that are affected by this rule is GSA's SAM database, which allows direct estimates of the number of small contractor firms.[244] Based on the most current SAM data available, if OFCCP defines "small" as fewer than 500 employees, then there are 328,552 small contractor firms. If OFCCP defines "small" as firms with less than $35.5 million in revenues, then there are 315,902 small contractor firms. Thus, OFCCP establishes a range of 315,902–328,552 as the total universe of small contractor firms that the final rule may affect.

However, this range represents a significant overestimate of the number of small contractor firms that the final rule will in fact affect. First, as described above in the preamble section on "Discussion of Impacts," the SAM database itself probably represents an overestimate, because it includes thousands of recipients of Federal monies that are Federal grantees, not contractors, and thus not subject to E.O. 11246. Second, it includes contractors that have inactive contracts and contracts of $10,000 or less; the final rule affects only those contractors that have active contracts with an annual value in excess of $10,000.[245]

Most important, most if not all of the contractor firms in the universe will not be impacted by the final rule because they already are subject to prohibitions on making employment decisions based on sex. The final rule updates the existing regulations to address discrimination based on pregnancy, harassment, and decisions based on sex-based stereotypes, among other things. These revisions and updates bring OFCCP's regulations at part 60–20 in line with the current standards of title VII, with applicable state anti-discrimination laws, and with OFCCP's own FCCM and Directives. Thus, small contractor firms should already be in compliance with the requirements of the final rule.

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[244] *See supra* note 13. Federal contractor status cannot be discerned from the SBA firm size data. SBA firm size data can only be used to estimate the number of small firms, not the number of small contractor firms. As described in the text *supra*, OFCCP uses the SBA data to estimate the impact of the final rule on a "typical" or "average" small firm in each of the 19 industries. OFCCP then assumes that a typical small firm is similar to a small contractor firm. It is based on this analysis that OFCCP believes that this rule will not have a significant economic effect on a substantial number of small businesses.

[245] *See supra* text accompanying note 193.

OFCCP has closely reviewed the initial RFA economic analysis it used in the proposed rule and carefully considered all the comments received. Based on this review and consideration and the available data sources, OFCCP concludes that the method used to conduct the initial RFA economic analysis in the proposed rule reasonably estimates the annual effect of the rule. OFCCP accordingly adopts the proposed rule's initial RFA economic analysis for purposes of the final rule, adjusted to reflect the increased cost of the final rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that OFCCP consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information or impose an information collection requirement unless the information collection instrument displays a currently valid OMB control number.

OFCCP has determined that there is no new requirement for information collection associated with this final rule. This final rule clarifies and updates current part 60–20 and removes outdated provisions so that the requirements conform to current sex discrimination law. The information collection requirements contained in the existing E.O. 11246 regulations are currently approved under OMB Control No. 1250–0001 (Construction Recordkeeping and Reporting Requirements) and OMB Control No. 1250–0003 (Recordkeeping and Reporting Requirements—Supply and Service). Consequently, this final rule does not require review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this rule does not include any Federal mandate that may result in excess of $100 million in expenditures by state, local, and tribal governments in the aggregate or by the private sector.

Executive Order 13132 (Federalism)

OFCCP has reviewed this final rule in accordance with E.O. 13132 regarding federalism, and has determined that it does not have "federalism implications." This rule will not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175 that would require a tribal summary impact statement. The rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Effects on Families

The undersigned hereby certifies that the final rule would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999. To the contrary, by better ensuring that working mothers do not suffer sex discrimination in compensation, benefits, or other terms and conditions of employment, and that working fathers do not suffer discrimination on the basis of sex-based stereotypes about caregiver responsibilities, this rule would have a positive effect on the economic well-being of families, especially of families headed by single mothers.

Executive Order 13045 (Protection of Children)

This final rule would have no environmental health risk or safety risk that may disproportionately affect children.

Environmental Impact Assessment

A review of this final rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* the regulations of the Council on Environmental Quality, 40 CFR 1500 *et seq.;* and DOL NEPA procedures, 41 CFR part 11, indicates this rule does not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

Executive Order 13211 (Energy Supply)

This rule is not subject to E.O. 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12630 (Constitutionally Protected Property Rights)

This rule is not subject to E.O. 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

Executive Order 12988 (Civil Justice Reform Analysis)

This rule was drafted and reviewed in accordance with E.O. 12988 and will not unduly burden the Federal court system. The rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects in 41 CFR Part 60–20

Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Government procurement, Labor, Sex, Women.

Patricia A. Shiu

Director, Office of Federal Contract Compliance Programs.

For the reasons set forth in the preamble, OFCCP revises 41 CFR part 60–20 to read as follows:

PART 60–20—DISCRIMINATION ON THE BASIS OF SEX

Sec.
60–20.1 Purpose.
60–20.2 General prohibitions.
60–20.3 Sex as a *bona fide* occupational qualification.
60–20.4 Discriminatory compensation.
60–20.5 Discrimination on the basis of pregnancy, childbirth, or related medical conditions.
60–20.6 Other fringe benefits.
60–20.7 Employment decisions made on the basis of sex-based stereotypes.
60–20.8 Harassment and hostile work environments.
Appendix to Part 60–20—Best Practices

Authority: Sec. 201, E.O. 11246, 30 FR 12319, 3 CFR, 1964–1965 Comp., p. 339 as amended by E.O. 11375, 32 FR 14303, 3 CFR

1966–1970 Comp., p. 684; E.O. 12086, 43 FR 46501, 3 CFR 1978 Comp., p. 230; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13672, 79 FR 42971.

§ 60–20.1 Purpose.

The purpose of this part is to set forth specific requirements that covered Federal Government contractors and subcontractors, including those performing work under federally assisted construction contracts ("contractors"),[1] must meet in fulfilling their obligations under Executive Order 11246, as amended, to ensure nondiscrimination on the basis of sex in employment. These regulations are to be read in conjunction with the other regulations implementing Executive Order 11246, as amended, set forth in parts 60–1, 60–2, 60–3, 60–4, and 60–30 of this chapter. For instance, under no circumstances will a contractor's good faith efforts to comply with the affirmative action requirements of part 60–2 of this chapter be considered a violation of this part.

§ 60–20.2 General prohibitions.

(a) *In general.* It is unlawful for a contractor to discriminate against any employee or applicant for employment because of sex. The term sex includes, but is not limited to, pregnancy, childbirth, or related medical conditions; gender identity; transgender status; and sex stereotyping.

(b) *Disparate treatment.* Unless sex is a *bona fide* occupational qualification reasonably necessary to the normal operation of a contractor's particular business or enterprise, the contractor may not make any distinction based on sex in recruitment, hiring, firing, promotion, compensation, hours, job assignments, training, benefits, or other terms, conditions, or privileges of employment. Such unlawful sex-based discriminatory practices include, but are not limited to, the following:

(1) Making a distinction between married and unmarried persons that is not applied equally to men and women;

(2) Denying women with children an employment opportunity that is available to men with children;

(3) Treating men and women differently with regard to the availability of flexible work arrangements;

(4) Firing, or otherwise treating adversely, unmarried women, but not unmarried men, who become parents;

(5) Applying different standards in hiring or promoting men and women on the basis of sex;

(6) Steering women into lower-paying or less desirable jobs on the basis of sex;

(7) Imposing any differences in retirement age or other terms, conditions, or privileges of retirement on the basis of sex;

(8) Restricting job classifications on the basis of sex;

(9) Maintaining seniority lines and lists on the basis of sex;

(10) Recruiting or advertising for individuals for certain jobs on the basis of sex;

(11) Distinguishing on the basis of sex in apprenticeship or other formal or informal training programs; in other opportunities such as on-the-job training, networking, mentoring, sponsorship, individual development plans, rotational assignments, and succession planning programs; or in performance appraisals that may provide the basis of subsequent opportunities;

(12) Making any facilities and employment-related activities available only to members of one sex, except that if the contractor provides restrooms, changing rooms, showers, or similar facilities, the contractor must provide same-sex or single-user facilities;

(13) Denying transgender employees access to the restrooms, changing rooms, showers, or similar facilities designated for use by the gender with which they identify; and

(14) Treating employees or applicants adversely because they have received, are receiving, or are planning to receive transition-related medical services designed to facilitate the adoption of a sex or gender other than the individual's designated sex at birth.

(c) *Disparate impact.* Employment policies or practices that have an adverse impact on the basis of sex, and are not job-related and consistent with business necessity, violate Executive Order 11246, as amended, and this part. Examples of policies or practices that may violate Executive Order 11246 in terms of their disparate impact on the basis of sex include, but are not limited to:

(1) Height and/or weight qualifications that are not necessary to the performance of the job and that negatively impact women substantially more than men;

(2) Strength, agility, or other physical requirements that exceed the actual requirements necessary to perform the job in question and that negatively impact women substantially more than men;

(3) Conditioning entry into an apprenticeship or training program on performance on a written test, interview, or other selection procedure that has an adverse impact on women where the contractor cannot establish the validity of the selection procedure consistent with the Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60–3; and

(4) Relying on recruitment or promotion methods, such as "word-of-mouth" recruitment or "tap-on-the-shoulder" promotion, that have an adverse impact on women where the contractor cannot establish that they are job-related and consistent with business necessity.

§ 60–20.3 Sex as a bona fide occupational qualification.

Contractors may not hire and employ employees on the basis of sex unless sex is a *bona fide* occupational qualification (BFOQ) reasonably necessary to the normal operation of the contractor's particular business or enterprise.

§ 60–20.4 Discriminatory compensation.

Compensation may not be based on sex. Contractors may not engage in any employment practice that discriminates in wages, benefits, or any other forms of compensation, or denies access to earnings opportunities, because of sex, on either an individual or systemic basis, including, but not limited to, the following:

(a) Contractors may not pay different compensation to similarly situated employees on the basis of sex. For purposes of evaluating compensation differences, the determination of similarly situated employees is case-specific. Relevant factors in determining similarity may include tasks performed, skills, effort, levels of responsibility, working conditions, job difficulty, minimum qualifications, and other objective factors. In some cases, employees are similarly situated where they are comparable on some of these factors, even if they are not similar on others.

(b) Contractors may not grant or deny higher-paying wage rates, salaries, positions, job classifications, work assignments, shifts, development opportunities, or other opportunities on the basis of sex. Contractors may not grant or deny training, apprenticeships, work assignments, or other opportunities that may lead to advancement to higher-paying positions on the basis of sex.

(c) Contractors may not provide or deny earnings opportunities because of sex, for example, by denying women equal opportunity to obtain regular and/or overtime hours, commissions, pay increases, incentive compensation, or any other additions to regular earnings.

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[1] This part also applies to entities that are "applicants" for Federal assistance involving a construction contract as defined in part 60–1 of this chapter.

(d) Contractors may not implement compensation practices that have an adverse impact on the basis of sex and are not shown to be job-related and consistent with business necessity.

(e) A contractor will be in violation of Executive Order 11246 and this part any time it pays wages, benefits, or other compensation that is the result in whole or in part of the application of any discriminatory compensation decision or other practice.

§ 60–20.5 Discrimination on the basis of pregnancy, childbirth, or related medical conditions.

(a) *In general.*—(1) Discrimination on the basis of pregnancy, childbirth, or related medical conditions, including childbearing capacity, is a form of unlawful sex discrimination. Contractors must treat people of childbearing capacity and those affected by pregnancy, childbirth, or related medical conditions the same for all employment-related purposes, including receipt of benefits under fringe-benefit programs, as other persons not so affected, but similar in their ability or inability to work.

(2) Related medical conditions include, but are not limited to, lactation; disorders directly related to pregnancy, such as preeclampsia (pregnancy-induced high blood pressure), placenta previa, and gestational diabetes; symptoms such as back pain; complications requiring bed rest; and the after-effects of a delivery.

(b) *Examples.* Examples of unlawful pregnancy discrimination include, but are not limited to:

(1) Refusing to hire pregnant people or people of childbearing capacity, or otherwise subjecting such applicants or employees to adverse employment treatment, because of their pregnancy or childbearing capacity;

(2) Firing female employees or requiring them to go on leave because they become pregnant or have a child;

(3) Limiting pregnant employees' job duties based solely on the fact that they are pregnant, or requiring a doctor's note in order for a pregnant employee to continue working; and

(4) Providing employees with health insurance that does not cover hospitalization and other medical costs for pregnancy, childbirth, or related medical conditions to the same extent that hospitalization and other medical costs are covered for other medical conditions.

(c) *Accommodations*—(1) *Disparate treatment.* It is a violation of Executive Order 11246 for a contractor to deny alternative job assignments, modified duties, or other accommodations to employees who are unable to perform some of their job duties because of pregnancy, childbirth, or related medical conditions where:

(i) The contractor denies such assignments, modifications, or other accommodations only to employees affected by pregnancy, childbirth, or related medical conditions;

(ii) The contractor provides, or is required by its policy or by other relevant laws to provide, such assignments, modifications, or other accommodations to other employees whose abilities or inabilities to perform their job duties are similarly affected, and the denial of accommodations imposes a significant burden on employees affected by pregnancy, childbirth, or related medical conditions and the contractor's asserted reasons for denying accommodations to such employees do not justify that burden; or

(iii) Intent to discriminate on the basis of pregnancy, childbirth, or related medical conditions is otherwise shown.

(2) *Disparate impact.* Contractors that have policies or practices that deny alternative job assignments, modified duties, or other accommodations to employees who are unable to perform some of their job duties because of pregnancy, childbirth, or related medical conditions must ensure that such policies or practices do not have an adverse impact on the basis of sex unless they are shown to be job-related and consistent with business necessity. For example, where a contractor's policy of offering light duty only to employees with on-the-job injuries has an adverse impact on employees affected by pregnancy, childbirth, or related medical conditions, the policy would be impermissible unless shown to be job-related and consistent with business necessity.

(d) *Leave*—(1) *In general.* To the extent that a contractor provides family, medical, or other leave, such leave must not be denied or provided differently on the basis of sex.

(2) *Disparate treatment.* (i) A contractor must provide job-guaranteed medical leave, including paid sick leave, for employees' pregnancy, childbirth, or related medical conditions on the same terms that medical or sick leave is provided for medical conditions that are similar in their effect on employees' ability to work.

(ii) A contractor must provide job-guaranteed family leave, including any paid leave, for male employees on the same terms that family leave is provided for female employees.

(3) *Disparate impact.* Contractors that have employment policies or practices under which insufficient or no medical or family leave is available must ensure that such policies or practices do not have an adverse impact on the basis of sex unless they are shown to be job-related and consistent with business necessity.

§ 60–20.6 Other fringe benefits.

(a) It shall be an unlawful employment practice for a contractor to discriminate on the basis of sex with regard to fringe benefits.

(b) As used herein, the term "fringe benefits" includes, but is not limited to, medical, hospital, accident, life insurance, and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(c) The greater cost of providing a fringe benefit to members of one sex is not a defense to a contractor's failure to provide benefits equally to members of both sexes.

§ 60–20.7 Employment decisions made on the basis of sex-based stereotypes.

Contractors must not make employment decisions on the basis of sex-based stereotypes, such as stereotypes about how males and/or females are expected to look, speak, or act. Such employment decisions are a form of sex discrimination prohibited by Executive Order 11246, as amended. Examples of discrimination based on sex-based stereotyping may include, but are not limited to:

(a) Adverse treatment of an employee or applicant for employment because of that individual's failure to comply with gender norms and expectations for dress, appearance, and/or behavior, such as:

(1) Failing to promote a woman, or otherwise subjecting her to adverse employment treatment, based on sex stereotypes about dress, including wearing jewelry, make-up, or high heels;

(2) Harassing a man because he is considered effeminate or insufficiently masculine; or

(3) Treating employees or applicants adversely based on their sexual orientation where the evidence establishes that the discrimination is based on gender stereotypes;

(b) Adverse treatment of employees or applicants because of their actual or perceived gender identity or transgender status;

(c) Adverse treatment of a female employee or applicant because she does not conform to a sex stereotype about women working in a particular job, sector, or industry; and

(d) Adverse treatment of employees or applicants based on sex-based stereotypes about caregiver responsibilities. For example, adverse treatment of a female employee because of a sex-based assumption that she has (or will have) family caretaking responsibilities, and that those responsibilities will interfere with her work performance, is discrimination based on sex. Other examples of such discriminatory treatment include, but are not limited to:

(1) Adverse treatment of a male employee because he has taken or is planning to take leave to care for his newborn or recently adopted or foster child based on the sex-stereotyped belief that women and not men should care for children;

(2) Denying opportunities to mothers of children based on the sex-stereotyped belief that women with children should not or will not work long hours, regardless of whether the contractor is acting out of hostility or belief that it is acting in the employee's or her children's best interest;

(3) Evaluating the performance of female employees who have family caregiving responsibilities adversely, based on the sex-based stereotype that women are less capable or skilled than their male counterparts who do not have such responsibilities; and

(4) Adverse treatment of a male employee who is not available to work overtime or on weekends because he cares for his elderly father, based on the sex-based stereotype that men do not have family caregiving responsibilities that affect their availability for work, or that men who are not available for work without constraint are not sufficiently committed, ambitious, or dependable.

§ 60–20.8 Harassment and hostile work environments.

(a) Harassment on the basis of sex is a violation of Executive Order 11246, as amended. Unwelcome sexual advances, requests for sexual favors, offensive remarks about a person's sex, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) Harassment because of sex includes sexual harassment (including sexual harassment based on gender identity or transgender status); harassment based on pregnancy, childbirth, or related medical conditions; and harassment that is not sexual in nature but that is because of sex or sex-based stereotypes.

Appendix to Part 60–20—Best Practices

Best practices. Although not required by this part, following are best practices for contractors:

(1) Avoiding the use of gender-specific job titles such as "foreman" or "lineman" where gender-neutral alternatives are available;

(2) Designating single-user restrooms, changing rooms, showers, or similar single-user facilities as sex-neutral;

(3) Providing, as part of their broader accommodations policies, light duty, modified job duties or assignments, or other reasonable accommodations to employees who are unable to perform some of their job duties because of pregnancy, childbirth, or related medical conditions;

(4) Providing appropriate time off and flexible workplace policies for men and women;

(5) Encouraging men and women equally to engage in caregiving-related activities;

(6) Fostering a climate in which women are not assumed to be more likely to provide family care than men; and

(7) Fostering an environment in which all employees feel safe, welcome, and treated fairly, by developing and implementing procedures to ensure that employees are not harassed because of sex. Examples of such procedures include:

(a) Communicating to all personnel that harassing conduct will not be tolerated;

(b) Providing anti-harassment training to all personnel; and

(c) Establishing and implementing procedures for handling and resolving complaints about harassment and intimidation based on sex.

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Part III

The President

Proclamation 9460—Flag Day and National Flag Week, 2016

Federal Register
Vol. 81, No. 115
Wednesday, June 15, 2016

Presidential Documents

Title 3—

The President

Proclamation 9460 of June 10, 2016

Flag Day and National Flag Week, 2016

By the President of the United States of America

A Proclamation

Two hundred and forty years ago, a small band of patriots declared independence, proclaiming in one voice that we are free to determine our own destiny and carry out the work of self-governance. Driven by their unyielding spirit and drawing inspiration from the Stars and Stripes, a string of 13 Colonies later expanded to become a united 50 States. Throughout our history, the American flag has steadfastly served as an emblem of this great experiment in democracy. On Flag Day and during National Flag Week, we pledge our allegiance to the banner that has served as a guiding symbol on our Nation's journey, and we celebrate the hope it inspires in the American people.

With hands over hearts, Americans of all backgrounds and beliefs have long saluted Old Glory and honored its legacy. Our flag persists as a powerful representation of freedom and opportunity. Waving high above capitol buildings and courthouses, military bases and embassies across the globe, and on the distant surface of the moon, it calls on each of us to remember our obligations to the Republic for which it stands and to carry forward the unwavering optimism that defines us. America endures because of the courage of servicemen and women who serve under this standard, and our veterans are forever draped in the red, white, and blue when they are laid to rest. Wherever the flag lies or flies, its message is clear: We rise and fall together, as one Nation and one people.

The American flag invokes pride in our citizens and hope in those who come to our shores in search of a brighter tomorrow. In recognition of the ways it has embodied our ideals and sustained our Nation, let us pay tribute to the Star Spangled Banner and continue striving to create a more perfect and indivisible Union—with liberty and justice for all.

To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949, as amended (63 Stat. 492), designated June 14 of each year as "Flag Day" and requested that the President issue an annual proclamation calling for its observance and for the display of the flag of the United States on all Federal Government buildings. The Congress also requested, by joint resolution approved June 9, 1966, as amended (80 Stat. 194), that the President annually issue a proclamation designating the week in which June 14 occurs as "National Flag Week" and call upon citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim June 14, 2016, as Flag Day and the week beginning June 12, 2016, as National Flag Week. I direct the appropriate officials to display the flag on all Federal Government buildings during that week, and I urge all Americans to observe Flag Day and National Flag Week by displaying the flag. I also call upon the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor America, to celebrate our heritage in public gatherings and activities, and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of June, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

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